

**TELEPHONE ENGINEERING & SERVICE COMPANY, INC.,
PETITIONER, VS. WORKMEN'S COMPENSATION COMMISSION,
PROVINCIAL SHERIFF OF RIZAL AND LEONILA SANTOS GATUS, FOR
HERSELF AND IN BEHALF...**

G.R. No. L-28694. May 13, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

These Certiorari proceedings stem from the award rendered against petitioner Telephone Engineering and Services, Co., Inc. (TESCO) on October 6, 1967 by the Acting Referee of Regional Office No. 4, Quezon City Sub-Regional Office, Workmen's Compensation Section, in favor of respondent Leonila S. Gatus and her child-ren, dependents of the deceased employee Pacifico L. Gatus. The principal contention is that the award was rendered without jurisdiction as there was no employer-employee relationship between petitioner and the deceased.

Petitioner is a domestic corporation engaged in the business of manufacturing telephone equipment with offices at Sheridan Street, Mandaluyong, Rizal. Its Executive Vice-President and General Manager is Jose Luis Santiago. It has a sister company, the Utilities Management Corporation (UMACOR), with offices in the same location. UMACOR is also under the management of Jose Luis Santiago.

On September 8, 1964, UMACOR employed the late Pacifico L. Gatus as Purchasing Agent. On May 16, 1965, Pacifico L. Gatus was detailed with petitioner company. He reported back to UMACOR on August 1, 1965. On January 13, 1967, he contracted illness and although he returned to work on May 10, 1967, he died nevertheless on July 14, 1967 of "liver cirrhosis with malignant degeneration."

On August 7, 1967, his widow, respondent Leonila S. Gatus, filed a "Notice and Claim for Compensation" with Regional Office No. 4, Quezon City Sub-Regional Office, Workmen's Compensation Section, alleging therein that her deceased husband was an employee of TESCO, and that he died of liver cirrhosis.[1] On August 9, 1967, said Office wrote petitioner transmitting the Notice and Claim for Compensation, and requiring it to submit an Employer's Report of Accident or Sickness pursuant to Section 37 of the Workmen's Compensation Act (Act No. 3428).[2] An "Employer's Report of Accident or Sickness" was thus submitted with UMACOR indicated as the employer of the deceased. The Report was signed by Jose Luis Santiago. In answer to questions Nos. 8 and 17, the employer stated that it would not controvert the claim for compensation, and admitted that the deceased employee contracted illness "in regular occupation." [3] On the basis of this Report, the Acting Referee awarded death benefits in the amount of P5,759.52 plus burial expenses of P200.00 in favor of the heirs of Gatus in a letter-award dated October 6, 1967 [4] against TESCO.

Replying on October 27, 1967, TESCO, through Jose Luis Santiago, informed the Acting Referee that it would avail of the 15-days-notice given to it to state its non-conformity to the award and contended that the cause of the illness contracted by Gatus was in no way aggravated by the nature of his work.[5]

On November 6, 1967, TESCO requested for an extension of ten days within which to file a Motion for Reconsideration,[6] and on November 15, 1967, asked for an additional extension of five days.[7] TESCO filed its "Motion for Reconsideration and/or Petition to Set Aside Award" on November 18, 1967, alleging as grounds therefor, that the admission made in the "Employer's Report of Accident or Sickness" was due to honest mistake and/or excusable negligence on its part, and that the illness for which compensation is sought is not an occupational disease, hence, not compensable under the law.[8] The extension re-requested was denied. The Motion for Reconsideration was likewise denied in an Order issued by the Chief of Section of the Regional Office dated December 28, 1967[9] predicated on two grounds: that the alleged mistake or negligence was not excusable, and that the basis of the award was not on the theory of direct causation alone but also on that of aggravation. On January 28, 1968, an Order of execution was issued by the same Office.

On February 3, 1968, petitioner filed an "Urgent Motion to Compel Referee to Elevate the Records to the Workmen's Compensation Commission for Review".[10] Meanwhile, the Provincial Sheriff of Rizal levied on and attached the properties of TESCO on February 17, 1968, and scheduled the sale of the same at public auction on February 26, 1968. On February 28, 1968, the Commission issued an Order requiring petitioner to submit verified or true copies of the Motion for Reconsideration and/or Petition to Set Aside Award and Order of December 28, 1967, and to show proof that said Motion for Reconsideration was filed within the reglementary period, with the warning that failure to comply would result in the dismissal of the Motion. However, before this Order could be released, TESCO filed with this Court, on February 22, 1968, the present petition for "Certiorari with Preliminary Injunction" seeking to annul the award and to enjoin the Sheriff from levying and selling its properties at public auction.

On February 29, 1968, this Court required respondents to answer the Petition but denied Injunction.[11] TESCO's Urgent Motion dated April 2, 1968, for the issuance of a temporary restraining order to enjoin the Sheriff from proceeding with the auction sale of its properties was denied in our Resolution dated May 8, 1968.

TESCO asserts:

- I. That the respondent Workmen's Compensation Commission has no jurisdiction nor authority to render the award (Annex 'D', Petition) against your petitioner there being no employer-employee relationship between it and the deceased Gatus;
- II. That petitioner can never be estopped from questioning the jurisdiction of respondent commission especially considering that jurisdiction is never conferred by the acts or omission of the parties;
- III. That this Honorable Court has jurisdiction to nullify the award of respondent commission.

TESCO takes the position that the Commission has no jurisdiction to render a valid award in this suit as there was no employer-employee relationship between them, the deceased having been an employee of UMACOR and not of TESCO. In support of this contention, petitioner submitted photostat copies of the payroll of UMACOR for the periods May 16-31, 1967 and June 1-15, 1967[12] showing the name of the deceased as one of the three employees listed under the Purchasing Department of UMACOR. It also presented a photostat copy of a check of UMACOR payable to the deceased representing his salary for the period June 14 to July 13, 1967.[13]

Both public and private respondents contend, on the other hand, that TESCO is estopped from claiming lack of employer-employee relationship.

To start with, a few basic principles should be re-stated: the existence of employer-employee relationship is the jurisdictional foundation for recovery of compensation under the Workmen's Compensation Law.[14] The lack of employer-employee relationship, however, is a matter of defense that the employer should properly raise in the

proceedings below. The determination of this relationship involves a finding of fact, which is conclusive and binding and not subject to review by this Court.[15]

Viewed in the light of these criteria, we note that it is only in this Petition before us that petitioner denied, for the first time, the employer-employee relationship. In fact, in its letter dated October 27, 1967 to the Acting Referee, in its request for extension of time to file Motion for Reconsideration, in its "Motion for Reconsideration and/or Petition to Set Aside Award," and in its "Urgent Motion to Compel the Referee to Elevate Records to the Commission for Review," petitioner represented and defended itself as the employer of the deceased. Nowhere in said documents did it allege that it was not the employer. Petitioner even admitted that TESCO and UMACOR are sister companies operating under one single management and housed in the same building. Although respect for the corporate personality as such, is the general rule, there are exceptions. In appropriate cases, the veil of corporate fiction may be pierced as when the same is made as a shield to confuse the legitimate issues.[16]

While, indeed, jurisdiction cannot be conferred by acts or omission of the parties, TESCO's denial at this stage that it is the employer of the deceased is obviously an afterthought, a device to defeat the law and evade its obligations.[17] This denial also constitutes a change of theory on appeal which is not allowed in this jurisdiction.[18] Moreover, issues not raised before the Workmen's Compensation Commission cannot be raised for the first time on appeal.[19] For that matter, a factual question may not be raised for the first time on appeal to the Supreme Court.[20]

This Certiorari proceeding must also be held to have been prematurely brought. Before a petition for Certiorari can be instituted, all remedies available in the trial Court must be exhausted first.[21] Certiorari cannot be resorted to when the remedy of appeal is present.[22] What is sought to be annulled is the award made by the Referee. However, TESCO did not pursue the remedies available to it under Rules 23, 24 and 25 of the Rules of the Workmen's Compensation Commission, namely, an appeal from the award of the Referee, within fifteen days from notice, to the Commission; a petition for reconsideration of the latter's resolution, if adverse, to the Commission en banc; and within ten days from receipt of an unfavorable decision by the latter, an appeal to this Court. As petitioner had not utilized these remedies available to it, Certiorari will not lie, it being prematurely filed. As this Court ruled in the case of Manila Jockey Club, Inc. vs. Del Rosario, 2 SCRA 462 (1961):

"An aggrieved party by the decision of a Commissioner should seek a reconsideration of the decision by the Commission en banc. If the decision is adverse to him, he may appeal to the Supreme Court. An appeal brought to the Supreme Court without first resorting to the remedy referred to is premature and may be dismissed."

Although this rule admits of exceptions, as where public welfare and the advancement of public policy so dictate, the broader interests of justice so require, or where the Orders complained of were found to be completely null and void, or that the appeal was not considered the appropriate remedy,[23] the case at bar does not fall within any of these exceptions.

WHEREFORE, this Petition is hereby dismissed.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] page 9, Rollo.

[2] page 10, *ibid*.

- [3] page 11, *ibid.*
- [4] page 13, *ibid.*
- [5] page 24, *ibid.*
- [6] page 38, *ibid.*
- [7] page 41, *ibid.*
- [8] pages 25-27, *ibid.*
- [9] pages 30-32, *ibid.*
- [10] pages 48-50, *ibid.*
- [11] page 18, *ibid.*
- [12] pages 90-91, *ibid.*
- [13] page 92, *ibid.*
- [14] *Madrigal Shipping Co. vs. Melad*, 7 SCRA 330 (1963).
- [15] *Abong vs. WCC*, 54 SCRA 379 (1973).
- [16] *Santos vs. Vasquez*, 22 SCRA 1156 (1968).
- [17] see *La Campana Coffee Factory, Inc. vs. Kaisahan ng mga Manggagawa sa La Campana (KKM)*, 93 Phil. 160 (1953).
- [18] *Carantes vs. Court of Appeals*, 76 SCRA 514 (1977).
- [19] *Buenaventura vs. WCC*, 76 SCRA 485 (1977).
- [20] *Gonzales-Precilla vs. Rosario*, 33 SCRA 228 (1970).
- [21] *De Gala-Sison vs. Maddela*, 67 SCRA 478 (1975).
- [22] *Fernando vs. Vasquez*, 31 SCRA 288 (1970).
- [23] *Fernando vs. Vasquez*, *supra*.

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