

SOCIAL SECURITY SYSTEM, PETITIONER, VS. COURT OF APPEALS AND MANILA COSMOS AERATED WATER FACTORY, INC., RESPONDENTS.

G.R. No. 55764. February 16, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review a decision of the Court of Appeals in *Social Security System, et al. vs. Manila Cosmos Aerated Water Factory, Inc.*, CA-G.R. No. SP 03296-R, adverse to the petitioner. The antecedent facts consist of the following:

In a petition filed with the Social Security Commission (SSC), the Social Security System (SSS) together with Jose Concepcion, Manuel Chan, Manuel Ong, Roberto Lai, Arturo Gonzales, William Co, Federico Marcial, Santiago Mancuba, Jesus Crelencia, Alfredo So and Pedro Aquino, the individual petitioners were sought to be declared employees of Manila Cosmos Aerated Water Factory, Inc. (Cosmos) and not independent contractors under the following Agreement to Peddle Soft Drinks:

"1. The MANUFACTURER shall provide the PEDDLER with a delivery truck to be used by the latter, under his own responsibility, exclusively in the sales of the products of the former purchased by the PEDDLER from the MANUFACTURER;

"2. The PEDDLER himself shall carefully and in strict observance to traffic regulations, drive the truck furnished him by the MANUFACTURER 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 the MANUFACTURER, and their compensation including salaries, wages, overtime pay, separation pay, bonus or other remunerations and privileges shall be for the PEDDLERS own account;

"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 that of his driver and helpers;

"4. The PEDDLER shall secure at his own expense all necessary license 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 MANUFACTURER'S products, covered by this contract;

"5. All goods (soft drinks) purchased by the PEDDLER shall be charged to him at a factory price of P0.86 per case of the 6.6. oz. size, ex-warehouse; PROVIDED, However, that, if the PEDDLER purchases a total of not less than 200 cases of the 6.5 oz. size a day, he shall be entitled to a dealer's discount of P7.30;

"6. Upon the execution of this agreement, the PEDDLER shall give a cash bond in the amount of P500.00 against which the MANUFACTURER shall charge the PEDDLER with any unpaid account at the end of the day or with any damage to the truck or other account which is properly chargeable to the PEDDLER; within 30 days after termination of this agreement, the cash bond, after deducting proper charges, shall be returned to the PEDDLER;

"7. The PEDDLER shall liquidate and pay his account at the end of each day, and his failure to do so shall subject his cash bond or so much thereof as may be necessary to such set offs and payments as shall be proper against the accounts in question;

"8. This contract shall be effective only up to December 31, 1962 and supersedes any or all other previous contracts that may have been entered into between the parties; However, either of the parties may terminate the same upon seven (7) days prior notice to the other;

"9. Upon the termination of this agreement, unless the same is renewed, the delivery truck and such other equipment furnished by the MANUFACTURER 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 the manufacturer." (Rollo, pp. 24-25.)

The status of the individual petitioners was important because if they were employees of Cosmos and not independent contractors, then Cosmos would have "to pay the employer's share of premium contributions (employer's and employees' share) for and in behalf of the delivery helpers, as employees of respondent corporation, plus the penalties thereon for late remittance of premium contributions, covering the period of delinquency from the respective dates of their coverage up to the present" as prayed for in the petition.

After hearing, the SSC rendered a resolution in favor of the SSS and the peddlers holding that an employer-employee relationship existed between Cosmos and the peddlers. Cosmos appealed to the Court of Appeals and in a decision promulgated on October 16, 1979, that Court affirmed the resolution of the SSC. However, upon a motion for reconsideration, the Court of Appeals on October 13, 1980, set aside its previous decision and reversed the resolution of the SSC. Hence, the instant appeal where the petitioner is the SSS alone; the individual peddlers have not seen fit to appeal.

We could have dismissed the instant petition by minute resolution because precedents warrant such an action. But to put an end to litigations of this sort and arrest what Cosmos calls judicial harassment, a decision is in order.

In *Mafinco Trading Corporation vs. Ople, et al.* No. L-37790, March 25, 1976, 70 SCRA 139, the question was whether there was an employer-employee relationship under the terms of a peddling contract in words almost identical to the one quoted above. This Court, thru Mr. Justice Aquino said:

"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 peddler 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 pro-ducts (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 of Repomanta and Moralde were not employees of Mafinco but were independent contractors as found by the NLRC and its factfinder 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 there of 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., 96 Phil. 941).

'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 pre-mises, 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." (At pp. 161-163, *Italics supplied.*)

We hold that conformably to Mafinco, the peddling contract involved in the instant petition makes the peddler an independent contractor. Additionally, We have taken into account the fact that the individual petitioners before the SSC who were the principal beneficiaries of the petition have become indifferent to their cause.

WHEREFORE, the judgment of the Court of Appeals is hereby affirmed. Costs against the petitioner.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, Ericta, and Escolin, JJ., concur.

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