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[G. R. Nos. L-10943 and L-10944. December 28, 1957]

THE ANGAT RIVER IRRIGATION SYSTEM AND VICENTE R. CRUZ, SUPERVISING PROJECT ENGINEER, PETITIONERS, VS. ANGAT RIVER WORKER'S UNION (PLUM) AND THE COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

D E C I S I O N

FELIX, J.:

The Angat River Irrigation System is a Division or Section of the Bureau of Public Works engaged in the maintenance and operation of irrigation systems in Bulacan and nearby provinces, the appropriation for which project is included in the yearly General Appropriations Act being passed by Congress.

Case G. R. No. L-10943.—On January 5, 1956, the Acting Prosecutor of the Court of Industrial Relations filed, on behalf of the Angat River Irrigation System Workers' Union (PLUM), whose members were actually employed in said project, a complaint with said Court, docketed as Case No. 814-ULP, making the Angat River Irrigation System and its supervising engineer as party respondents. The complaint alleged, among other things, that respondents committed unfair labor practices by interfering with, restraining or coercing the employees in the exercise of the Iatter's right to self-organization; by practicing discrimination in the hiring or tenure of employment of said employees in order to discourage membership with the union, and by refusing to bargain collectively with the representatives of the employees. As basis for the charge, the complaint stated that on August 3, 1955, the union presented a statement of proposals to the employer consisting of 15 demands. As the latter failed to act on the same, the union president sent a letter to the supervising engineer and also saw him personally for the purpose of inquiring on the stand of the Angat River Irrigation System as regards their demands, but that official intimated that they will all be fired instead if they do not desist from their union activities because their organization was illegal; that a certain Feliciano Clements was demoted from the position of water master to that of a collector, and that on September 20, 1955,

Ceferino Roque, Tomas Palileo and Abelardo Crisostomo, officers and active members of the union, were dismissed from the service. It was, therefore, prayed that respondents be ordered to refrain from further committing the unfair labor practice complained of; to reinstate Ceferino Roque, Tomas Palileo, Abelardo Crisostomo and Feliciano Clemente to their respective former positions with back wages from the time of their dismissal or transfer to the time of their actual reinstatement, and for such other relief as the court may deem just and equitable in the premises.

Case G. R. No. L—10944.—It also appears on record that on January 9, 1956, the Angat River Workers' Union (PLUM) filed with the Court of Industrial Relations a petition for certification as the majority union (Case No. 813-MC) in accordance with the provisions of the Indus- trial Peace Act contending, among others, that it was a legitimate labor union duly permitted by the Department of Labor to operate under Permit No. 1424-IP; that it consisted of at least 95% of the total number of ordinary employees in said project; and that there was an urgent need for said union to be immediately certified because the employer refused to bargain with the union and instead resorted to unfair labor practices. It was thus prayed that after due notice or hearing, the petitioning union be certified as the sole and exclusive collective bargaining representative of the employees of the unit.

When required by the Industrial Court to file its answer to the complaint, respondents opposed by filing a motion to dismiss arguing that the Angat River Irrigation System being an entity under the Bureau of Public Works, which is an instrumentality of the Government, cannot be drawn into that proceeding in virtue of the fundamental principle that the State cannot be sued by private persons without its consent. The Court of Industrial Relations, by order of June 29, 1956, deferred action on this motion to dismiss until after the presentation of evidence by the parties and directed therein respondents to file their answer in 5 days. As the motion filed by respondents to reconsider said order was denied by the Court on the alleged ground that the order was "interlocutory" in nature, the Angat River Irrigation System and its supervising engineer instituted this action for prohibition and in accordance with : their prayer, this Court issued a writ of preliminary injunction restraining the Industrial Court from enforcing its order of June 29, 1956, in Case No. 814-ULP and from proceeding with the hearing of Case No. 313-MC, upon the filing by petitioners of a bond tor P200.00.

Asserting that the Angat River Irrigation System, as an agency of the Government is immune from suit, petitioners question the jurisdiction of the Court of Industrial Relations

to entertain the complaint for unfair labor practice and the petition for certification election filed by the Angat River Irrigation System Workers' Union (PLUM) and to require them to appear before said Court to answer the same. There is no controversy that the Angat River Irrigation System is a Section of the Division of Irrigation of the Bureau of Public Works falling under the direct supervision of the President through the Pepartment of Public Works and Communications, created pursuant to Act No. 2152, known as the Irrigation Act approved on February 6, 1912, the expenditures of which are taken care of by the National Government. The appropriation Act No. 1600 (Appropriations Act for the fiscal year for the said project appears on p. 626-627 of Republic 1956-1957) under the Special Fund covering the National Irrigation System and on p. 625 of the 1957-1958 Budget, Republic Act No. 1800, an itemized appropriation for the salaries and wages of positions in said system, in the same manner as the itemized appropriations for the payment of salaries and wages of officials and employees of the Bureau of Public Works. Consequently, it being an instrumentality of the Government, the employees working thereunder and receiving compensation from the amount appropriated by the Legislature for its operation are government employees.

Therefore, the issues presented before Us in these cases are; (1) whether government employees may validly organize themselves into a union and in the affirmative, whether it may demand that the Government enter into collective bargaining agreements with said union; and (2) whether the Court of Industrial Relations acquired jurisdiction over the person of defendants in Cases Nos. 814- ULP and 313-MC of that Court.

I. Section 11 of the Industrial Peace Act (Rep. Act No. 875) provides the following:

> SEC. 11. PROHIBITION AGAINST STRIKES IN THE GOVERNMENT.—The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, area governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modification in their terms and conditions of employment. Such employees may belong to any labor organization which, doss not impose the obligation to strike or to join in strike: *Provided, however*, That this Section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to government corporations.

It is apparent from the foregoing provision that the law does not intend to curtail absolutely the right of government employees to self-organization or be affiliated with any labor organization, subject only to the limitation that such organisation does not impose the obligation to strike or to join in strike if said employees are engaged in governmental functions.

The employees involved in these cases are employed in the aforementioned Division of Irrigation, which was created in virtue of Act 2152 (The Irrigation Act) providing for the establishment of a council that would appropriate our public waters; that would determine all existing rights in connection thereto; that would construct, maintain and operate irrigation systems for the Government. This undertaking of regulating the use and appropriation of our public waters by the Government, in turn, arose out of the duty of the State to supervise the disposition and use of our natural resources and the correlated exhortation by the Constitution as regards its conservation and utilization. For purposes of applying the provisions of Section 11 of Republic Act No. 875, We have to draw the distinction between *governmental* from *proprietary* functions of the Government and in this connection We deem it proper to cite the following authorities that are enlightening on the point:

> As ordinarily constituted, municipal corporations (and this may be said of the National Government) have dual character, the one governmental, legislative, or public; the other, proprietary or private. In their public capacity *a responsibility exists in the performance of acts for the public benefit, and in, this respect their are "merely a part of the, machinery of government of, the sovereignty creating them, and the authority of the stats is supreme*. But in their PROPRIETARY or private character their powers arc supposed to be conferred not from, considerations of state, but for the *private advantage of the particular corporation as a distinct legal personality* (Bouvier's Law Dictionary, 3rd Revision, Vol. II, 2270).
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> In its governmental or public character, the corporation is made, by the state, one of its instruments, or the local depository of certain limited and prescribed political powers, to be exercised for the public good in behalf of the state rather than for itself. But in its proprietary or private character, the theory is that the powers are supposed not to be conferred primarily or chiefly from considerations connected with the government of the state at large, but for the

> private advantage of the compact community which is incorporated as a distinct legal personality or corporate individual; and as to such powers, and to property acquired and contracts made there- under, the corporation is frequently regarded as having the rights find obligations of a private rather than those of a public, corporation (Trenton vs. New Jersey, 262 US 182, 67 L ed 937, 29 ALE, 1471).
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> The governmental functions of a municipal corporation are those conferred or imposed upon it as a local agency, to be exercised not only in the interest of its inhabitants, but also in the advancement of the public good or welfare as affecting the public generally (37 Am. Jur. 727)'.
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> The distinction between acts in the performance of a governmental function and those in the performance of a corporate or proprietary function is that in the case of the former, the municipal corporation is executing the legislative mandate with respect to a public duty generally, while in the other, it is exercising its private rights as a corporate body (Loeb vs. Jacksonville, 101 Fla. -129, 69 ALR 459).

In the light of the authorities aforecited, the Angat River Irrigation System unmistakably exercises governmental functions, not only because it falls under the direct supervision of the President of the Philippines, through the Department of Public Works in virtue of Commonwealth Act No. 87 giving the President authority to administer the irrigation systems constructed by the Government pursuant to Act 2152, as amended, but also because the nature of the duties imposed on said agency and performed by it does not reveal that it was intended to bring to the Government any special corporate benefit or pecuniary profit. Furthermore, the Irrigation Act (No. 2152), as amended, does not create or establish irrigation systems for the private advantage of the Government, but primarily and chiefly for considerations connected with the general welfare of the people; and in so far as the determination of claims for the appropriation of public waters is concerned, the Irrigation Act places the Director of Public Works on equal footing with the Director of Lands with respect to applications for the appropriation of disposable public lands. Consequently, the employees working therein do not fall within the exception of Section 11 of the Industrial Peace Act. But even conceding, for the sake of argument only, that government employees, like petitioner's employees, are not prohibited by law to associate themselves and form part of a labor union, may said organization demand that the Government negotiate and enter into agreement with the union in connection with the

wages, hours of work and other conditions of employment of its members which are proper subjects of collective bargaining?

Collective bargaining has been denned as:

> "A procedure looking toward making of collective agreements between employer and accredited representatives of employees concerning' wages, hours, and other conditions of employment, and requires that parties deal with each other with open and fair minds and sincerely endeavor to overcome obstacles existing between them to the end that employment relations may be stabilized and obstruction to free flow of commerce prevented" (Rapid Roller Co. vs. National Labor Relations Board, CCA. 7, 126 P. 2d 452);
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> "The term 'collective bargaining' denotes, in common usage as well as in legal terminology, negotiations looking toward a collective agreement" (Pampanga Bus Co. vs. Pambusco Employees' Union, 68 Phil. 611), and the Industrial Peace Act, giving a more comprehensive definition, states that it is "the meeting and conferring promptly and expeditiously and in good faith, tot the purpose of negotiating an agreement with respect to wages, hours, and/or other terms and conditions of employment, and of executing a written contract incorporating such agreement if requested by either party, or for the purpose of adjusting any grievances or question arising under such agreement" (Sec. 13, Rep. Act No. 875).

Collective bargaining, which the Industrial Peace Act aims to utilize as one of the means of insuring harmonious labor-management relationship is imposed as an obligation not only on the employees but also on the employer (Sec. 13, Rep. Act No. 875; Isaac Peral Bowling Alley vs. United Employees Welfare Association et al.,* G. E. No. L-9831, Oct. 30, 1957), in the expectation that with this method or device, the employer and the labor organization designated or selected by the majority of the employees to represent them, may freely discuss and enter into agreement on matters relative to rates of pay, wages, hours of employment and other conditions of employment of the workers.

It is not controverted that respondent Union has been permitted by the Bureau of Labor to operate and that the members of the Union constitute the majority of the employees of the Angat River Irrigation System. Hence, had the present cases' involved ordinary industrial

employees, there would be no doubt that the respondent Union could lawfully claim the rights allowed by law to a labor organization and properly represent its members in collective bargaining contracts with the employer.

An "employer" is defined as follows:

> An employer is one who employs the services of others; one for whom employees work and who pays their wages or salaries (Black's Law Dictionary, 4th ed., p. 618).
>
> A n employer includes any person acting in the interest of an employer, directly or indirectly (Sec. 2-c, Rep. Act 875).

In the United States, parallel legislation excludes from said definition "the United States or any State or political subdivisions thereof (*See* Levine vs. Farley, 107 F. 2d 186; 184 L,. Ed. 519—1940), but our law contains no specific provision exempting the Government from the ordinary acceptation of the word "employer". Notwithstanding this omission, We believe that if it were the intent of the law to relegate the Government to the position of an ordinary employer and equally impose on the same the duty to enter into collective bargaining agreements with its employees, there would be no reason for the statement in Section 13 of the Industrial Peace Act to the effect that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law", instead of leaving them to be the subject of proper bargaining contracts. Evidently, in making this declaration and the pronouncement that it would be the policy of said Act to prohibit strikes against the Government for the purpose of securing changes or modifications in their terms and conditions of employment, Republic Act No. 875 exempts the Government from the operation of its provision on collective bargaining because conditions of employment in the government service can no longer be the subject of agreements of contracts between the employer and the employed. Indeed, it is noteworthy to remember that these matters are fixed, not by any private person, but by Congress, and that appointments and promotions in the government service are determined by merit and fitness, subject to the regulations issued and adopted by the Bureau of Civil Service. Likewise, appropriations for the operation of the entire machinery of the Government are prepared and disbursed not out of motive to profit or gain, as in an industrial or business concern, but in the furtherance of the policies of government. Thus, it is clear to our mind that in view of the special characteristic of an

employment with the government, there is nothing unreasonable in the mandate of the law limiting the activities of a union of its employees and depriving the same of some rights allowed to an ordinary labor organization.

II. Although none of the parties has raised the question that the petitioners in the above entitled cases are not the real parties in interest. We deem it proper to say a few words on this matter. In the case of Republic of the Philippines vs. Cesareo de Leon et al., 101 Phil., 773, 54 Off. Gaz., [3] 663, We held that:

In contemplation of the Workmen's Compensation Act (and in the same thing may be said of the Industrial Peace Act—R.A. 875), the Bureau of Public Works cannot be considered as the *employer* of those working- thereunder, for it is merely a part of the machinery of the Government. Hence, the Workmen's Compensation Commission has no authority to adjudge the said Bureau liable and to require it to pay the claim of a laborer who had rendered services in said Bureau without notifying the Government of said claim through the Solicitor General, because the case, which necessarily involves a liability to the national funds, is an action against the Government and, therefore, the latter is an indispensable party to the case.

Paraphrasing what is said in the foregoing doctrine, We can state that in the cases at bar the petitioner Angat River Irrigation System (respondent in the lower Court), as an entity under the Bureau of Public Works, has no personality to sue or be sued. And this is also true with regard to the Bureau of Public Works which is merely a part of the machinery of the Government. In lieu of said entity and Bureau it is the Republic of the Philippines, if at all, that should have been sued, because these cases affect the policy of the Government towards its employees as expressed in Section 11 of the Industrial Peace Act. Consequently, the action of the respondent Union should have been directed against the State.

On the other hand, it is a basic and fundamental principle of the law that the Government cannot be sued before courts of justice without its consent, a principle that springs from the theory that there can be no legal right against the authority that makes the law on which that right depends (Kawananakao vs. Polybank, 205 U.S. 349, 51 L. Ed. 834). Just like any other privilege or right, this immunity may be waived and the Government can be brought in as a party defendant only in those cases wherein it expressly consents to be sued, as in the case of moneyed claim arising from contract which could be the basis of civil action between private parties (Sec. 1, Act 3083).

There can be no argument on the point that although not the Government itself, this privilege of non-suability of the Government extends to the Angat River Irrigation System, it being an entity of the former. And this is logical, because any suit, action or proceeding against an agency of the government would in practice be a suit, action or proceeding against the Government itself, of "which said agency is a mere office (METROPOLITAN TRANSPORTATION SERVICE (METRAN) vs. Paredes et al., 79 Phil. 819; 45 Oft. Gaz., No. 7, p. 2835. The rationale for this principle of government immunity from suit is laid down in the same case of METRAN vs. Paredes, *supra*, when this Court fittingly said:

> "In a republican state, like the Philippines, government immunity from suit without its consent is derived from the will of the people, themselves in freely creating" a government of tile people, by the people, and for the people—a representative government through which they have agreed to exercise the powers and discharge tho duties of their sovereignty for the common good and general welfare. In so agreeing, the citizens have solemnly undertaken to surrender some of their private rights and interests which were calculated to conflict with the higher rights and larger interests of the people as a whole, represented by the government thus established by them all. One of those 'higher rights', based upon those 'larger interests' is that government immunity. The members of the respondent Labor Union themselves are part of the people who have freely formed that government and participated in that solemn undertaking. In this sense—and a very real one it is—they are. in effect attempting to *sue themselves* along- with the rest of the people represented by their common government—an anomalous and absurd situation indeed."

As only natural or juridical persons may be parties in an action (See. 1, Rule 3, Rules oi Court) and as the Angat River Irrigation System, as an agency of the Government, cannot be sued without its consent much less over its objection, it is obvious that the Court of Industrial Relations did not acquire jurisdiction over the persons of herein petitioners and thus devoid of any power to take cognizance of the cases at bar.

Wherefore, the orders appealed from requiring petitioners in both cases to answer the petition and to enter trial in cases Nos. 313-MC and 814-ULP of the respondent Court, is hereby set aside and said cases are dismissed. The preliminary injunction issued is hereby made permanent. Without pronouncement as to costs. It is. so ordered.

Paras, C J., Bengzon, Reyes, A., Bautista Angelo, Labrador and *Endencia, JJ.,* concur.

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[*] Supra, P. 219

DISSENTING

CONCEPCION, J.:

These two (2) cases are interrelated. Case G. R. No. L-10943 involves a complaint against the Angat River Irrigation System and its Supervising Project Engineer,

Vicente R. Cruz, for alleged unfair labor practices. It was filed with the Court of Industrial Relations, on or about January 5, 1956, by an acting prosecutor of said Court, on behalf of the Angat River Workers' Union (PLUM), a legitimate labor organization, the members of which are employees of said System. Said complaint was docketed as Case No. 814-ULP of said Court. Case G. R. No. L-10944 refers to' a petition filed, by the same labor organization, with said Court, on January 9, 1956, and docketed therein as Case No. 313-MC, for certification of said union as the sole and exclusive collective bargaining representative of the employees in the aforementioned System.

Upon being required to answer the complaint in the first case, the respondents therein filed a motion to dismiss upon the ground of lack of jurisdiction, because the Angat River Irrigation System is allegedly "an entity under the Bureau of Public Works, Department of Public Works and Communications," and the State cannot be sued without its consent. The System, likewise, opposed the certification prayed for in the second case, for the same reason. In both cases, the system filed manifestations containing arguments in support of the motion to dismiss and the opposition to the petition for certification. Soon, thereafter, by an order dated June 29, 1956, the Court of Industrial Relations deferred the resolution of the motion to dismiss "until presentation of evidence of the parties" and directed "the respondent to file its answer in the two (2) cases" within five (5) days from notice. A reconsideration of this order having been denied, the System and its supervising project engineer instituted the present special civil actions for prohibition, against the said labor organization and the Court of Industrial Relations. Upon the filing of the requisite bond, we issued a writ of preliminary injunction restraining the Court of Industrial Relations from

requiring petitioners herein to answer the complaint and to enter trial in said cases, until further orders from this Court.

Section 2 of Rule 67, of the Rules of Court reads:

> "When the proceedings of any tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, are "without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging' the facts with certainty and praying that judgment be rendered commanding the defendant to desist from further proceedings in the action or matter specified therein, with costs."

Has the Court of Industrial Relations acted without or in excess of its jurisdiction, or with grave abuse of discretion, in deferring the resolution of the motion to dismiss of petitioners herein, until after the presentation of the evidence in the cases under consideration? To my mind, the answer should be in the negative, for the order complained of is specifically authorized by the Rules of Court Referring to motions to dismiss, section 3, Rule 8, of said Rules, provides:

> "After hearing the court may deny or grant the motion or allow amendment of pleading, or may defer the hearing and determination of the motion until the trial if the ground alleged therein does not appear to be indubitable."

In fact, the ground upon which petitioners' motion to dismiss relies is not indubitable. The very lack of unanimity among the members of this Court, on the issue thus raised, is the best proof thereof. Besides, the status of the Angat River Irrigation System is not clear from the record before us. Petitioners allege that the System is "an entity *under* the Bureau of Public Works, Department of Public Works and Communications." It is not claimed that the System is a division or section of said Bureau or Department, or otherwise forms *part* of either. The very term "entity" used to describe the System, denotes an "individuality" or "unit," which is complete in itself and hence capable of standing *alone*.

What is more, the allegation to the effect that the System is "under" the Bureau of Public

Works tends to show that the former is not part of the latter. The divisions or sections of said Bureau are constituent portions thereof, but not under the same, for one cannot be either over or under itself. All private educational institutions in the Philippines are subject to the jurisdiction of, and, therefore, under, the Department of Instruction, and yet said institutions are not part either of said Department of the Government. So, too, all government owned and controlled corporations are subject to, and, consequently, *under* the authority of the Auditor General, and yet such corporations are not part of the Government, in a political sense.

Again, Act No. 2152 authorizes the majority of all the appropriators of any Irrigation System to organize themselves into association for the purpose of maintaining and operating said System, and to incorporate said association under the Corporation Act. Under these circumstances, I am not prepared to say that the Court of Industrial Relation had exceeded its jurisdiction or abused its discretion in issuing the order complained of, or that the Government is the real party in interest in these cases, not petitioners herein, or that the Angat River Irrigation System has no judicial personality of its own. Indeed, *how could it have filed the present actions for prohibition if it did not have such 'personality*?

Independently of the foregoing, section 11 of Republic Act No. 875, provides:

> "The terms and conditions of employment in the Government, including- any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modification in their terms and conditions of employment. Such employees may belong to any labor organization which does not impose the obligation to strike or to join in strike; *Provided, however*, That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including hut not limited to govern- mental corporations."

Are the members of respondent Union "employed in governmental functions" or "in proprietary functions of the Government?" It cannot be denied, and it would seem to be conceded, that if the Angat River Irrigation System were engaged in proprietary functions of the Government, the Court of Industrial Relations would have, under section 11, jurisdiction over the subject matter of the cases under consideration.

In this connection, it appears that Act No. 2152 governs the appropriation of the "public waters" of the Philippines. Pursuant to section 1 of Article XIII of the Constitution, such waters "*belong* to the State." In other words, the title of the State to said waters is that of *owner* thereof. As such, the authority of the State to dispose of said waters and to regulate the appropriation thereof springs, *not* from its sovereignty, but from its *dominical* rights. Consequently, the System established to administer said waters and attend to its distribution is engaged, not in political or governmental functions, but in purely "proprietary furictions." Thus, the overwhelming weight of authority is to the effect "that insofar as a city undertakes to sell water for private consumption it is engaged in a *commercial* venture, as to which, *it functions as any other business corporation*, and for negligence in connection therewith is liable as a private corporation would be in performing" a similar service" (The Law of Municipal Corporations, McQuillin, 3rd ed., Vol. 18, pp. 423-424).

> "In undertaking to supply water at price, municipality is *not performing governmental functions* but is engaged in trade, and is liable just as private, company would be for any negligence in laying out of its pipes, In keeping them in repair, or in furnishing potable water through them. Harvard Furniture Co., Inc. vu. City of Cambridge, 320 Mass. 227, 68 N.K (2d) 684.
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> "Municipality in contracting to provide water supply acts under its *proprietary* power and not under its legislative, public or govern- mental powers. Farmers' State Bank vs. Conrad, 100 Mont. 415, 47 P. (2d) 853." (The Law of Municipal Corporations, McQuillin, 3rd ed., *supra*; italics ours.)

Referring1 to irrigation districts in the United States, which are basically identical to our irrigation systems, under Act No. 2152, the Supreme Court of Idaho said:

> "An irrigation district is a public quasi corporation, organized, however, to conduct a business for the private benefit of the owners of land within its limits. They are the members of. the corporation, control its affairs, and alone are benefited by its operations. It is, in the administration of its business, the *owner* of its system in a proprietary rather than a public capacity, and must assume and bear the burdens of *proprietary ownership*."

(Nampa vs. Nampa & M. Irrig. Dist. 19 Idaho, 779, 115 Fac. 979; italics ours.)

On the question whether or not an irrigation district is an agency of the State, as a sovereign political unit, and, as such, enjoys the immunities accorded to the Government, in the performance of its political functions, the case of E.W. Stephenson vs. Pioneer Irrigation District (288 Pac. 421), is specially in point. A synthesis of the issue raised and the decision rendered in said case is made in the ALR, from which the following is quoted:

> "* * * the plaintiff sought damages for injuries to crops on his land during 1923, 1024, 1925, and 1926, caused by water seeping, percolating, and escaping from the defendant's canal. *The defendant contended that irrigation districts were agencies of the state*, and were, therefore, not liable for the negligent construction or operation of their canals or ditches. The court, after a careful review of the authorities defining an irrigation district, conceded that such a quasi public corporation possessed some governmental powers and exercised some governmental functions, but held that *the construction and operation of Us irrigation canals and ditches was a proprietary rather than a governmental function*, and hence the district was responsible in damages for the negligent construction or operation of its canal system." (69 A.L.E., p. 1233; italics ours.)

Even, however, if the Angat River Irrigation System were a division or section of the Bureau of Public Works, or otherwise formed part thereof, it would not follow that the functions of the System are governmental, not proprietary in nature. The Government discharges functions of a dual character. Some functions involve the exercise of sovereignty. Others imply merely the exercise of proprietary powers, like those of private corporations. Very often, the latter are assigned to organs or bodies separate and distinct from the Government, as a political organization. But, sometimes, such proprietary functions are entrusted to a section or division of a Department, Bureau or Office of the Government proper. Such fact does not affect the character of the functions concerned, which depends upon its nature, not upon the officer" or body which exercises it.

With particular reference to irrigation systems or irrigation districts, it can not be denied that, at times, the magnitude characterizing the same, the big number of people

directly affected thereby and the effect thereof upon the community or the nation, in general, have some points of analogy with the consequences of the exercise of sovereign functions of the State. The same magnitude, number and effect may be found, however, in the operation of some enterprises, such as those engaged in the production and supply of electric power, or in furnishing telephonic, telegraphic and radio communication, or transportation, or in the production and distribution of prime necessities, and the like. Still, there could be no doubt that the functions performed by these enterprises are exclusively proprietary in nature. As held in Holderbaum vs. Hidalgo County Water Improvement District (297 S.W. 865, aff'd in 11 S. W. [2d] 506) ;

> " * * * Primarily, a water improvement district is in no better position than a city is when exercising its purely local powers and duties. Its general purposes are *not essentially public* in their nature, but are only *incidentally* so; those purposes may be likened to those of a city which is operating a waterworks system, or an irrigation system. * * * A water improvement district can do nothing, it has and furnishes no facilities, for the administration of the sovereign government. Its officers have no power or authority to exercise any of the functions of the general government, or to enforce any of the laws of the, state or any of its other subdivisions, or collect taxes other than those assessed by the district. *They have no rrwre power or authority than that of the officers of a private corporation organized for like 'purposes*. As a practical matter, the primary objects and purposes of such district are of a '*purely local nature*, for the district is created and operated for the sole benefit of *its own members*, and an analysis of those objects and purposes discloses that *they directly benefit only the landowners who reside within and whose lartns form a part, of the district, to the exclusion of all other residents therein*. It is true, of course, that the state and the general public are greatly benefited by the proper operation of the district, and to that extent its objects and accomplishments are public in their nature, but *this characteristic is only incidental to the primary and chief object of the corporation, which is the irrigation of lands forming a part of the district*. It is obvious, then, that the purposes and duties of such districts do not come within the the definition of public rights, purposes, and duties which would entitle the district to the exemption raised by the common law as a protection to corporations having a purely public purpose and performing essentially public duties. (To the same effect, see Hidalgo County Water Control & Improv. Pist. vs. Cannaway [1928, Tex. Civ. App.] 13 S. W. [2d] 204.)" (Italics ours.)

Thus, in Metropolitan Water District vs. Court of Industrial Relations, (91 Phil, 840) this Court, speaking through Chief Justice Paras, with the concurrence of Justices Pablo, Bengzon, Fadilla, Bautista Angelo and Labrador, held:

> * * * there is authority to the effect that in determining the jurisdiction of labor courts, the term 'industrial relation' refers 'to affairs relating to industry *and involving government departments devoted to public service.*' (State vs. Howat, 198 Pae. 080, 693.) *The business of providing water supply and sewerage service may for all practical purposes be likened to the industry engaged by coal companies, gas companies, power plants, ice plants, and the like.*" (Italics ours.)

The majority opinion declares, in effect, that petitioners herein are not the "real parties in interests;" that the Angat River Irrigation System has no personality to sue; and that, in lieu of said System, respondent Labor Union should have directed its action against the State, which cannot be sued, however, without its consent. I cannot see my way clear to adhering to this view, for the following1 reasons, namely:

1. The records do not show, as yet, the status of the Angat River Irrigation System. As above stated, not even petitioners herein allege that it is part of the Government. That is why the lower court was justified in not passing upon this question and in deferring action thereon, until after the presentation of the evidence for both parties.
2. The certification case is not a suit against anybody. Neither the System nor its supervising project engineer has been named as respondents, in the petition for certification. Said system and the aforementioned officer sought to intervene therein of their own volition and free will.

> "A 'certification proceeding* is not a *'litigation*' in the sense that the latter term is commonly understood but a mere investigation of a non-adversary, fact-finding character in which the investigating agency plays the part of a disinterested

> investigator seeking merely to ascertain the desires of the employees as. to the matter of their representation. * * *." (The Law Governing Labor Disputes in the Philippines, Francisco, 3rd ed., Vol. I, p. 457; italics ours.)

Indeed, section 12(b) of Republic Act No. 875, provides:

> "Whenever a question arises concerning the representation of employees, the Court may investigate such controversy and certify to the parties in writing" the name of the labor organization that has been designated or selected for the appropriate bargaining unit. In any such investigation, the: Court shall provide for a speedy and appropriate hearing upon due notice and if there is any reasonable doubt as to whom the employees have chosen as their representative for purpose of collective bargaining, the Court shall order a secret ballot election to be conducted by the Department of Labor, to ascertain who is the freely chosen representative of the employees, under such rules and regulations as the Court may prescribe, at which balloting representatives of the contending parties shall have the right to attend as inspectors. Such a balloting shall be known as a 'certification election' and the Court shall not order certifications in the same unit more than once in twelve months. The organization receiving the majority votes cast in such election shall be certified as the exclusive bargaining representative of such employees."

Paraphrasing Rothenberg on Labor Relations (pp. 514- 515), Francisco in his work on the Law Governing Labor Disputes in the Philippines (Vol. I, p.458), says:

> "Proceedings for certification under this section must he distinguished from 'complaint' proceedings under Section 5 of the Act. The latter are adversary proceedings and 'litigation' in the sense that a charge of misconduct (unfair labor practices) is made which, when supported by proof, may result in the entry of a remedial order. In 'complaint' proceedings the Board (Court) acts as a quasi-judicial body in receiving and weighing1 evidence, making1 findings of fact, and rendering redress. However, 'certification* and 'de-certification' proceedings

under this section of the Act are of a non-adversary nature. Such proceedings are not predicated upon an allegation of misconduct requiring,relief, but, rather, are merely of an inquisitorial nature. The Board's (Court's) functions are not judicial in nature, but are merely of an investigative character. The object of the proceedings is not the decision, of any alleged commission of wrongs nor asserted deprivation of' rights but is merely the determination of proper bargaining units and the ascertainment of the will and choice of the employees in respect of the selection of a bargaining representative. The determination of the proceedings does not entail the entry of remedial wears Co redress rights but culminates solely in an official designation of bargaining units and an affirmation of the employees' expressed choice of bargaining agent.

"Proceedings under this section of the- Act are commenced by a 'Petition' which is filed with the Board (Court) by the seeking party. Actions charging an employer with the commission of an 'unfair labor practice' and looking towards the entry of a remedial order are instituted by the filing of a 'Complaint' by the Board (Court) against the offending party, following the filing with the Board (Court of a 'Charge' by the aggrieved party. In 'certification' proceedings the 'Petition1 is the initial process. In 'Complaint' proceedings the Board's (Court's) 'Complaint' and not the party's 'Charge' is the process commencing the action." (Italics ours.)

1. Insofar as the case for alleged unfair labor practices is concerned, the following facts are worthy of notice, to wit: (a) "It is a well-established doctrine that when the Government engages in business, it abdicates part of its sovereign prerogatives and descends to the level of a citizen, and thereby subjects itself to the laws and regulations governing the relation of labor and management." (Price Stabilization Corporation vs. Court of Industrial Relations,[1] G. R. Nos. L-9797 and L-9834, November 29, 1957.) (See, also, Manila Hotel Employees Assn. vs. Manila Hotel Co., 73 Phil., 374; National Airports Corporation vs. Teodoro,[2] G. R. No. L-5122, April 30, 1952; Santos vs. Aquino,[3] 48 Off. Gaz., 4815) ; (6) Either the Angat River Irrigation System has a personality of its own, independent of that of the Government, or not. If it has, then the complaint was properly filed against said System. If it has not, and, yet, the acts charged as constituting

unfair labor practices have taken place, then the System is merely a nominal party defendant. And the reason therefor is simple. Said acts were performed, presumably, by the Supervising Project Engineer or other officer of the System, or by order of either. Inasmuch as those acts—if the charge were true— are illegal and the System (if forming part of the Government) could not have authorized the performance thereof, the result is that the author of said acts shall be personally liable therefor. In short, the action for unfair labor practices (on the assumption that the System constitutes an integral portion of the Government, as a political organization) would have to be maintained primarily against the officer or officers guilty of such practices, not against the Government.

2. Section 11 of Republic Act No. 875 provides that the exclusion of "employees employed in proprietary functions of the government" from the operation of the exemption therein established, is "not limited to governmental corporations." If the employer of said employees is not a governmental corporation, it must have no personality of its otvn, distinct and separate from the government itself, and must, therefore, be part and parcel of the government. The "employees employed in proprietary functions of the government," who are excluded from the exemption contained in said section 11, are, therefore, not only those engaged by "governmental corporations' but, also, those working in offices of the government, though performing "proprietary functions of the Government." The application of Republic Act No. 875 to these two agencies of the government necessarily implies a grant of authority for the exercise of the jurisdiction of the Court of Industrial Relations against said agencies, should the same violate the provisions of said Act. In other words, by said provision, the Government, in effect, consents to being sued, insofar as it may be necessary to the enforcement or execution of Republic Act No. 875.

I vote, therefore, for the affirmance of the order complained of.

Reyes, J. B. L., J., concurs.

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[1] Supra, p. 515

[2] 91 Phil., 203.

[3] 92 Phil, 281.

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