

****Title:** China National Machinery & Equipment Corporation (Group) v. Hon. Cesar D. Santamaria, et al. [GR No. 181464, January 21, 2009]**

****Facts:****

1. On September 14, 2002, China National Machinery & Equipment Corporation (Group) (CNMEG), represented by its chairman, Ren Hongbin, entered into a Memorandum of Understanding (MOU) with North Luzon Railways Corporation (Northrail) to conduct a feasibility study for a proposed railroad from Manila to San Fernando, La Union (Northrail Project).
2. On August 30, 2003, the Export Import Bank of China (EXIM Bank) and the Philippine Department of Finance (DOF) signed another MOU providing the Philippines with a preferential buyer's credit of up to USD 400 million for the Northrail Project. This loan agreement had a 20-year term, with a 5-year grace period and an annual interest rate of 3%.
3. On October 1, 2003, the Chinese Ambassador to the Philippines, Wang Chungui, informed Philippine DOF Secretary Jose Isidro Camacho that CNMEG had been designated as the prime contractor for the Northrail Project.
4. A contract agreement for constructing Section I, Phase I of the North Luzon Railway System from Caloocan to Malolos was signed by Northrail and CNMEG on December 30, 2003, amounting to USD 421,050,000.
5. On February 26, 2004, the Philippine government and EXIM Bank solidified their financial arrangement through the Buyer Credit Loan Agreement No. BLA 04055.
6. On February 13, 2006, stakeholders including LUPA, KMM-LUPA Chapter, Kadamay, and several private individuals filed a complaint for annulment of the contract and an injunction against CNMEG and various Philippine government agencies. They claimed the contracts violated the Constitution, the Government Procurement Reform Act (RA No. 9184), the Government Auditing Code (PD No. 1445), and the Administrative Code (EO No. 292).
7. The Regional Trial Court of Makati (RTC Br. 145) set a hearing for the issuance of injunctive reliefs on March 17, 2006.
8. CNMEG filed a Urgent Motion for Reconsideration (March 29, 2006), an Urgent Motion to Dismiss (April 12, 2006), and subsequent motions on various grounds, including lack of jurisdiction and state immunity.
9. RTC Br. 145 denied CNMEG's motions and set a summary hearing. CNMEG's Motion for Reconsideration was also rejected by March 10, 2008.
10. CNMEG then petitioned the Court of Appeals (CA) to issue a Temporary Restraining Order (TRO) and Preliminary Injunction, which was also denied in a decision on September 30, 2008, and confirmed in a resolution on December 5, 2008.

11. Subsequently, CNMEG filed a Petition for Review on Certiorari dated January 21, 2009, with the Supreme Court.

****Issues:****

1. Whether CNMEG is considered an agent of the sovereign People's Republic of China, thus entitled to immunity from suit.
2. Whether the Northrail contracts can be deemed executive agreements between two sovereign states, rendering them immune from judicial review.
3. The necessity or absence of a certification from the Department of Foreign Affairs (DFA) as part of the immunity claim.
4. The determination of whether the act being undertaken by CNMEG constitutes an act *jure imperii* (governmental act) or *jure gestionis* (commercial act).
5. Whether the CA inadvertently caused a procedural limbo, impacting the effectiveness of lower court proceedings.
6. Whether the Northrail Project was exempt from the requirement of competitive public bidding.
7. Whether the court failed to consider a precedent established in the *Neri vs. Senate Committee hearings* case.
8. CNMEG's entitlement to reliefs such as a TRO or preliminary injunction to halt further proceedings in Civil Case No. 06-203.

****Court's Decision:****

1. ****Immunity from Suit:**** The Court found that CNMEG, despite being a government-owned corporation, was engaged in a commercial transaction rather than a sovereign activity (*jure gestionis*) and therefore was not entitled to immunity from suit. The Northrail Project was driven primarily by commercial interests.
2. ****Executive Agreement:**** The Court ruled that the Contract Agreement was not an executive agreement between China and the Philippines but a commercial contract between two corporate entities (Northrail and CNMEG). Thus, this contract could be judicially reviewed.
3. ****Certification from DFA:**** The Court highlighted that an endorsement from the DFA certifying the entity's diplomatic status or entitlement to immunity is necessary to substantiate claims of sovereign immunity. CNMEG failed to present such a certification.
4. ****Acts of CNMEG:**** The nature of CNMEG's acts was assessed, and the evidence demonstrated that CNMEG was engaged in commercial activity rather than exercising sovereign powers.
5. ****Procedural Limbo:**** The Court found no procedural limbo resulting from the CA's

rulings; procedural actions, including injunctions and dismissals, were considered within due judicial process.

6. **Public Bidding:** The contention that the Northrail Project was not subject to competitive public bidding was moot since the primary issues were resolved without necessitating a judgment on this point.

7. **Neri Precedent:** The Court held that the Neri precedent was irrelevant to the current circumstances and issues.

Doctrine:

1. **Sovereign Immunity:** Distinguished between *jure imperii* (governmental acts) and *jure gestionis* (commercial acts). Per the restrictive doctrine adhered to by the Philippines, immunity applies only to acts *jure imperii*.

2. **Foreign Entities in Local Jurisdictions:** Foreign government-owned corporations that engage in commercial activities do not enjoy immunity from suit in local courts unless explicitly certified by the DFA or endorsed by the executive branch.

3. **Contracts vs. Executive Agreements:** Agreements concluded by corporations even if government-owned do not constitute executive agreements unless entered by states governed by international law.

Class Notes:

- **Key Legal Concepts & Elements:**

- **Sovereign Immunity:** Distinguishes governmental (*jure imperii*) vs. commercial activities (*jure gestionis*); immunity applies only to the former.

- **Executive Agreement:** Defined under the Vienna Convention; must be between states, written, and governed by international law.

- **Role of DFA Certification:** Endorsement by DFA or equivalent necessary to establish immunity.

- **Commercial Transactions:** Foreign entities engaged in commercial transactions cannot claim sovereign immunity.

Statutes:

- **Section 9, Article XVI of the Philippine Constitution:** The State may not be sued without its consent.

- **Republic Act No. 9184 (Government Procurement Reform Act):** Sets competitive public bidding requirements.

- **Presidential Decree No. 1445 (Government Auditing Code):** Governs procedures for auditing government contracts.

****Historical Background:****

- The case unfolds against a backdrop of significant infrastructural ambition in the Philippines, looking to modernize transportation through foreign-funded rail projects. This engaged juridical scrutiny on the fine line between state immunity and commercial engagements within both international law and local statutes.