

LORENZO SAYSON, AS HIGHWAYS AUDITOR, BUREAU OF PUBLIC HIGHWAYS, CEBU FIRST ENGINEERING DISTRICT; CORNELIO FORNIER, AS REGIONAL SUPERVISING AUDITOR, EASTERN VISAYAS REGION; ASTE...*G.R. No. L-30044. December 19, 1973*

Ponente: FERNANDO, J.

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The real party in interest before this Court in this certiorari proceeding to review a decision of the Court of First Instance of Cebu is the Republic of the Philippines, although the petitioners are the public officials who were named as respondents[1] in a mandamus suit below. Such is the contention of the then Solicitor General, now Associate Justice, Felix V. Makasiar, [2] for as he did point out, what is involved is a money claim against the government, predicated on a contract. The basic doctrine of non-suability of the government without its consent is thus decisive of the controversy. There is a governing statute that is controlling.[3] Respondent Felipe Singson, the claimant, for reasons known to him, did not choose to abide by its terms. That was a fatal misstep. The lower court, however, did not see it that way. We cannot affirm its decision.

As found by the lower court, the facts are the following: "In January, 1967, the Office of the District Engineer requisitioned various items of spare parts for the repair of a D-8 bulldozer, * * *. The requisition (RIV No. 67/0331) was signed by the District Engineer, Adventor Fernandez, and the Requisitioning Officer (civil engineer), Manuel S. Lepatan. * * * It was approved by the Secretary of Public Works and Communications, Antonio V. Raquiza. It is noted in the approval of the said requisition that 'This is an exception to the telegram dated Feb. 21, 1967 of the Secretary of Public Works and Communications.' * * * So, a canvass or public bidding was conducted on May 5, 1967 * * *. The committee on award accepted the bid of the Singkier Motor Service [owned by respondent Felipe Singson] for the sum of P43,530.00. * * * Subsequently, it was approved by the Secretary of Public Works and Communications; and on May 16, 1967 the Secretary sent a letter-order to the Singkier Motor Service, Mandaue, Cebu requesting it to immediately deliver the items listed therein for the lot price of P43,530.00. * * * It would appear that a purchase order signed by the District Engineer, the Requisitioning Officer and the Procurement Officer, was addressed to the Singkier Motor Service. * * * In due course the Voucher No. 07806 reached the hands of Highway Auditor Sayson for pre-audit. He then made inquiries about the reasonableness of the price. * * * Thus, after finding from the indorsements of the Division Engineer and the Commissioner of Public Highways that the prices of the various spare parts are just and reasonable and that the requisition was also approved by no less than the Secretary of Public Works and Communications with the verification of V. M. Secarro, a representative of the Bureau of Supply Coordination, Manila, he approved it for payment in the sum of P34,824.00, with the retention of 20% equivalent to P8,706.00. * * * His reason for withholding the 20% equivalent to P8,706.00 was to submit the voucher with the supporting papers to the Supervising Auditor, which he did. * * * The voucher * * * was paid on June 9, 1967 in the amount of P34,824.00 to the petitioner [respondent Singson]. On June 10, 1967, Highway Auditor Sayson received a

telegram from Supervising Auditor Fornier quoting a telegraphic message of the General Auditing Office which states: 'In view of excessive prices charge for purchase of spare parts and equipment shown by vouchers already submitted this Office direct all highway auditors refer General Office payment similar nature for appropriate action.' * * * In the interim it would appear that when the voucher and the supporting papers reached the GAO, a canvass was made of the spare parts among the suppliers in Manila, particularly, the USI (Phil.), which is the exclusive dealer of the spare parts of the caterpillar tractors in the Philip-pines. Said firm thus submitted its quotations at P2,529.64 only which is P40,000.00 less than the price of the Singkier. * * * In view of the over-pricing the GAO took up the matter with the Secretary of Public Works in a third indorsement of July 18, 1967. * * * The Secretary then circularized a telegram holding the district engineer responsible for overpricing." [4] What is more, charges for malversation were filed against the district engineer and the civil engineer involved. It was the failure of the Highways Auditor, one of the petitioners before us, that led to the filing of the mandamus suit below, with now respondent Singson as sole proprietor of Singkier Motor Service, being adjudged as entitled to collect the balance of P8,706.00, the contract in question having been upheld. Hence this appeal by certiorari.

- To state the facts is to make clear the solidity of the stand taken by the Republic. The lower court was unmindful of the fundamental doctrine of non-suability. So it was stressed in the petition of the then Solicitor General Makasiar. Thus: "It is apparent that respondent Singson's cause of action is a money claim against the government, for the payment of the alleged balance of the cost of spare parts supplied by him to the Bureau of Public Highways. Assuming momentarily the validity of such claim, although as will be shown hereunder, the claim is void for the cause or consideration is contrary to law, morals or public policy, mandamus is not the remedy to enforce the collection of such claim against the State * * *, but an ordinary action for specific performance * * *. Actually, the suit disguised as one for mandamus to compel the Auditors to approve the vouchers for payment, is a suit against the State, which cannot prosper or be entertained by the Court except with the consent of the State * * *. In other words, the respondent should have filed his claim with the General Auditing Office, under the provisions of Com. Act 327 * * * which prescribe the conditions under which money claim against the government may be filed * * *." [5] Commonwealth Act No. 327 is quite explicit. It is therein provided: "In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty days, exclusive of Sundays and holidays, after their presentation. If said accounts or claims need reference to other persons, office or offices, or to a party interested, the period aforesaid shall be counted from the time the last comment necessary to a proper decision is received by him." [6] Thereafter, the procedure for appeal is indicated: "The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim may, within thirty days from receipt of the decision, take an appeal in writing: (a) To the President of the United States, pending the final and complete withdrawal of her sovereignty over the Philippines, or (b) To the President of the Philippines, or (c) To the Supreme Court of the Philippines if the appellant is a private person or entity." [7]

- With the facts undisputed and the statute far from indefinite or ambiguous, the appealed decision defies explanation. It would be to disregard a basic corollary of the cardinal postulate of non-suability. It is true that once consent is secured, an action may be filed. There is nothing to prevent the State, however, in such statutory grant, to require that certain administrative proceedings be had and be exhausted. Also, the proper forum in the judicial hierarchy can be specified if thereafter an appeal would be taken by the party aggrieved. Here, there was no ruling of the Auditor General. Even had there been such, the court to which the matter should have been elevated is this Tribunal; the lower court could not legally act on the matter. What transpired was anything but that. It is quite obvious then that it does not have the imprint of validity.

WHEREFORE, the decision of the Court of First Instance of Cebu of September 4, 1968 is reversed and set aside, and the suit for mandamus filed against petitioners, respondents below, is dismissed. With costs against respondent Felipe Singson.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] This petition was filed by Lorenzo Sayson, Highways Auditor; Cornelio Fornier, Regional Supervising Auditor; Adventor Fernandez, District Engineer; Manuel S. Lepatan, Mechanical Engineer; Ramon Quirante, Property Custodian; Teodulfo Regis, Chief Accountant; and Asterio Buqueron, Cashier, of the Cebu First Engineering District of Cebu City.

[2] He was assisted by Solicitor Bernardo P. Pardo.

[3] Com. Act No. 327 (1938).

[4] Petition for Review, 2-4.

[5] Ibid, 4-5. The Solicitor General cited the following cases: City of Manila v. Posadas, 48 Phil. 309 (1925); Jacinto v. Director of Lands, 49 Phil. 853 (1926); Syquia v. Almeda Lopez, 84 Phil. 312 (1949); Aprueba v. Ganzon, L-20867, Sept. 3, 1966, 18 SCRA 8; Namarco v. Cloribel, L-27260, April 29, 1968, 23 SCRA 398.

[6] Commonwealth Act No. 327, Section 1 (1938).

[7] Ibid, Section 2.

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