

HARRY LYONS, INC., PLAINTIFF AND APPELLANT, VS. THE UNITED STATES OF AMERICA (651 UNITED STATES NAVAL SUPPLY DEPOT, U.S. NAVY, PHILIPPINES), DEFENDANT AND APPELLEE.

G. R. No. L-11786. September 26, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Plaintiff brought this action before the Court of First Instance of Manila to collect several sums of money arising from a contract entered into between plaintiff and defendant.

Defendant filed a motion to dismiss on the ground that the court has no jurisdiction over defendant and over the subject matter of the action. The court sustained this motion on the grounds that (a) the courts lacks jurisdiction over defendant, it being a sovereign state which cannot be sued without its consent; and (b) plaintiff failed to exhaust the administrative remedies provided for in Article XXI of the contract. Plaintiff took the case on appeal directly to this Court.

It appears that plaintiff and defendant entered into a contract for stevedoring service at the U.S. Naval Base, Subic Bay, Philippines, the contract to terminate on June 30, 1956. This contract was entered into pursuant to the provisions of Section 2 (c) (1) of the Armed Services Procurement Act of 1947 of the United States of America (Public Law 413, 80th Congress). It is undisputed that the contract was entered into between plaintiff and the Government of the United States of America.

"It is an established principle of jurisprudence in all civilized nations, resting on reasons of public policy, because of the inconvenience and danger which would follow from any different rule, that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission. Accordingly, other than those instances in which the United States has consented to be sued, the United States is immune from suit upon claims against it or debts due by it. * * * When consent to suit is not forthcoming, the only remedy of the party injured by an act of the United States is by an appeal to Congress" (54 Am. Jur., Section 127, pp. 633-635).

"In the case of Syquia vs. Lopez, et al, 47 Off. Gaz., 665; 84 Phil., 312 where an action was brought against U.S. Army Officers not only for the recovery of possession of certain apartments occupied by military personnel under a contract of lease, but also to collect back rents and rents at increased rates including damages, we held: * * * It is therefore, evident that the claim and judgment will be a charge against and a financial liability to the U. S. Government because the defendants had undoubtedly acted in their official capacities as agents of said Government, * * *. Consequently, the present suit should be regarded as an action against the United States Government. * * * Therefore, the suit cannot be entertained by the trial court for lack of jurisdiction." (Johnson vs. General Turner, et al., 94 Phil., 807).

It is however contended that when a sovereign state enters into a contract with a private person the state can be sued upon the theory that it has descended to the level of an individual from which it can be implied that it has given its consent to be sued under the contract. Thus, appellant cites the case of Santos vs. Santos, 92 Phil. 281;

48 Off. Gaz., 4815, wherein this Court made the following pronouncement:

"* * * If, where and when the state or its government enters into a contract, through its officers or agents, in furtherance of a legitimate aim and purpose and pursuant to constitutional legislative authority, whereby mutual or reciprocal benefits accrue and rights and obligations arise therefrom, and if the law granting the authority to enter into such contract does not provide for or name the officer against whom action may be brought in the event of a breach thereof, the state itself may be sued even without its consent, because by entering into a contract the sovereign state has descended to the level of the citizen and consent to be sued is implied from the very act entering into such contract. If the dignity of the state, the sacredness of the institution, the respect for the government are to be preserved and the dragging of its name in a suit to be prevented, the legislative department should name the officer or agent against whom the action may be brought in the event of breach of the contract entered into under its name and authority. And the omission or failure of the legislative department to do so is no obstacle or impediment for an individual or citizen, who is aggrieved by the breach of the contract, to bring an action against the state itself for the reasons already adverted to, to wit: the descent of the sovereign state to the level of the individual or citizen with whom it entered into a contract and its consent to be sued implied from the act of entering into such contract."

We agree to the above contention, and considering that the United States Government, through its agency at Subic Bay, entered into a contract with appellant for stevedoring and miscellaneous labor services within the Subic Bay area, a U.S. Navy Reservation, it is evident that it can bring an action before our courts for any contractual liability that that political entity may assume under the contract. The trial court, therefore, has jurisdiction to entertain this case in so far as appellee is concerned. But assuming that the trial court has jurisdiction to entertain this case, as set out above, did said court err in dismissing the complaint on the ground that plaintiff has failed to comply with the condition prescribed in the contract before an action could be taken in court against the U. S. Government?

Article XXI of the contract provides:

"Article XXI. Disputes.

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals, shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessary to imply bad faith, be final and conclusive, provided that, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision."

The foregoing lays down the procedure to be followed by plaintiff should it desire to obtain a remedy under the contract. Its remedy is to file its claim, not with the court, but with the Contracting Officer who is empowered to act and render a decision. If dissatisfied with his decision, plaintiff may appeal to the Secretary of the Navy where he would be "afforded an opportunity to be heard and to offer evidence in support of its appeal", and the decision of the Secretary shall be final and conclusive "unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessary to imply bad faith." Hence, it is only after the claim has been decided on appeal by the Secretary that plaintiff can resort to a court of competent jurisdiction.

"As this Court well said: ltt plaintiffs were aggrieved by the action or decision of the Director of Lands, their remedy was to appeal to the Secretary of Agriculture and Commerce. But it does not appear that they have done so. It does not even appear that they have pursued their protest to its conclusion in the Bureau of Lands itself. Having failed to exhaust their remedy in the administrative branch of the government, plaintiffs cannot now seek relief in the courts of justice.' (Eloy Miguel, et al. vs. Anacleto M. Vda. de Reyes, et al., 93 Phil., 542)." (Heirs of Gregorio Lachica, et al., vs. Fermin Ducusin, et al., 102 Phil., 551).

"In order to maintain a suit against the United States, plaintiff must show that the United States has consented to suit and must bring himself within the terms of the consent, and it is also generally held that he must first exhaust his administrative remedies." (91 C.J.S., p. 421)

It appearing in the complaint that appellant has not complied with the procedure laid down in Article XXI of the contract regarding the prosecution of its claim against the United States Government, or, stated differently, it has failed to first exhaust its administrative remedies against said Government, the lower court acted properly in dismissing this case.

Wherefore, the order appealed from is affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Reyes, J. B. L., and Endencia, JJ., concur.

Montemayor, Reyes, A., and Concepcion, JJ., concur in the result:

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