

INOCENCIO ROSETE, PETITIONER, VS. THE AUDITOR GENERAL, RESPONDENT

G.R. No. L-1120. August 31, 1948

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal from the decision of the Insular Auditor denying the claim of Inocencio Rosete and others against the Government in the amount of P35,376, for damages caused to buildings belonging to the claimant, which according to the appellant's claim were destroyed by fire that came from the contiguous warehouse, of the Emergency Control Administration, ECA, located at No. 2262 Azcarraga, due to the negligence of a certain Jose Frayno y Panlilio in igniting recklessly his cigarette-lighter near a five gallon drum into which gasoline was being drained, and of the officers of the said ECA, which is an office or agency of the Government, in storing gasoline in said warehouse contrary to the provisions of Ordinances of the City of Manila.

It is not necessary for us to pass upon the facts alleged by the appellant, but only on the question whether, assuming them to be true, the Insular Auditor erred in denying or dismissing the appellant's claim.

The claimant contends that the Auditor General erred in not finding that the government agency or instrumentality known as the Emergency Control Administration of the officers thereof, were guilty of negligence in storing a highly combustible and inflammable substance in its warehouse on bodega in Manila in violation of City Ordinances, and therefore the government is liable for the damages sustained by the claimant under article 1903 of the Civil Code, which in its pertinent part reads as follows:

"ART. 1903. The obligation imposed by the preceding article is enforceable not only for personal acts and omissions but also for those persons for whom another is responsible.

* * * * *

"The state is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom it properly pertained to do the act performed, in which case the provisions of the preceding article shall be applicable."

In the case of *Merritt vs. Government of the Philippine Islands* (34 Phil., 311), this Court held the following:

"* * * Paragraph 5 of article 1903 of the Civil Code reads:

"The state is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which cast the provisions of the preceding article shall be applicable."

The supreme court of Spain in defining the scope of this paragraph said:

" That the obligation to indemnify for damages which a third person causes to another by his fault or negligence is based, as is evidenced by the same Law 3, Title 15, Partida 7, on that the person obligated, by his

own fault or negligence, takes part in the act or omission of the third party who caused the damage. It follows therefrom that the state, by virtue of such provisions of law, is not responsible for the damage suffered by private individuals in consequence of acts performed by its employees in the discharge of the functions pertaining to their office, because neither fault nor even negligence can be presumed on the part of the state in the organization of branches of the public service and in the appointment of its agents; on the contrary, we must presuppose all foresight humanly possible on its part in order that each branch of service serves the general weal and that of private persons interested in its operation. Between these latter and the state, therefore, no relations of a private nature governed by the civil law can arise except in a case where the state acts as a judicial person capable of acquiring rights and contracting obligations.' (Supreme Court of Spain, January 7, 1898; 83 Jur. Civ., 24.)

* * *

'That the responsibility of the state is limited by article 1903 to the case wherein it acts through a special agent (and a special agent, in the sense in which these words are employed, is one who receives a definite and fixed order or commission, foreign to the exercise of the duties of his office if he is a special official) so that in representation of the state and being bound to act as an agent thereof, he executes the trust confided to him. This concept does not apply to any executive agent who is an employee of the active administration and who on his own responsibility performs the functions which are inherent in and naturally pertain to his office and which are regulated by law and the regulations.' (Supreme Court of Spain, May 18, 1904; 98 Jur. Civ., 389, 390.)

'That according to paragraph 5 of article 1903 of the Civil Code and the principle laid down in a decision, among others, of the 18th of May, 1904, in a damage case, the responsibility of the state is limited to that which it contracts through a special agent, duly empowered by a definite order or commission to perform some act or charged with some definite purpose which gives rise to the claim, and not where the claim is based on acts or omissions imputable to a public official charged with some administrative or technical office who can be held to the proper responsibility in the manner laid down by the law of civil responsibility.

Consequently, the trial court in not so deciding and in sentencing the said entity to the payment of damages, caused by an official of the second class referred to, has by erroneous interpretation infringed the provisions of article 1902 and 1903 of the Civil Code.' (Supreme Court of Spain, July 30, 1911; 122 Jur. Civ., 146.)"

There being no showing that whatever negligence may be imputed to the Emergency Control Administration or its officers, was done by an special agent, because the officers of the Emergency Control Administration did not act as special agents of the government within the above defined meaning of that word in article 1903 of the Civil Code in storing gasoline in warehouse of the ECA, the government is not responsible for the damages caused through such negligence.

The case of *Marine Trading vs. Government*, 39 Phil., 29, cited by the appellant, is inapplicable, because the plaintiff in that case recovered under the special provisions of articles 826, 827, 828 and 830 of the Code of Commerce and the Philippine Marine Regulations of the Collector of Customs, regarding collision of vessels, and not on the ground of tort in general provided for in article 1903 of the Civil Code.

Act No. 327, in authorizing the filing of claims against the Government with the Insular Auditor, and appeal by private persons or entities from the latter's decision to the Supreme Court, does not make any and all claims against the Government allowable, and the latter responsible for all claims which may be filed with the Insular Auditor under the provisions of said Act.

In view of the foregoing, the decision appealed from is affirmed.

Paras, Actg. C. J., Pablo Bengzon, Briones, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.,

On November 2, 1945, there was a fire at the ECA motor pool, 22 Azcarraga, Manila, reducing to ashes professional and cultural books, jewelries, clothing, furniture, silverwares, and other household equipment of Inocencio Rosete and his family, the total value of the losses amounting to P35,376.

The building which was burned was used by the ECA (Emergency Control Administration) as a bodega in which oil and gasoline, among others, have been stored.

Jose Fraino was the one who started the fire by igniting his cigarette-lighter, which he had just filled with gasoline, near a 5 gallon drum into which gasoline was then being drained. The spark produced by the lighter set fire on the gasoline, burning the bodega as well as the surrounding inhabited houses, together with their contents, among which, being the properties of claimant and his family. Jose Fraino has been prosecuted by the City Fiscal.

The storage of gasoline and other combustible and inflammable substances requires the securing of license and permit under the provisions of Acts 649, 650, and 651 of the revised ordinances of Manila and Ordinance No. 1985. On November 10, 1945, the Mayor of Manila certified that the ECA was not granted any permit to store gasoline in its motor pool at Azcarraga where the fire took place. The certification is corroborated by the Acting Assistant Treasurer and of the Acting Chief of the Fire Department of Manila.

The ECA has been organized by the government for the same substantial purposes for which the Philippine Relief and Rehabilitation Administration (PRRA) has been created by Commonwealth Act No. 716, where its purposes are specifically stated.

Commonwealth Act No. 327 gives aggrieved parties the right to submit their claims to the Auditor General for settlement and if dissatisfied with the latter's decision they may appeal to the Supreme Court.

Inocencio Rosete filed his claim with the Auditor General, who on October 3, 1946, denied the claim upon the theory that, "for even granting that the officials and employees of the former Emergency Control Administration (ECA) were negligent, the government cannot be prejudiced by the illegal or tortious acts of its servants".

The Auditor General failed to examine the merits of the claim in so far as the amount thereof is concerned.

Claimant appealed to the Supreme Court against the adverse decision of the Auditor General.

The case has been submitted for our decision since January, 1947, and since September, 1947, claimant has filed with us from time to time urgent motions to expedite the decision of the case.

There seems to be no dispute that the question whether the government or the state is answerable for the damages suffered by claimant must be decided by applying the provisions of articles 1902 and 1903 of the Civil Code.

Article 1903 provides:

"The obligation imposed by the next preceding article is enforcible, not only for personal acts and omissions, but also for those of persons for whom another is responsible.

"The State is subject to the same liability when it acts through a special agent, but not if the damage shall have been caused by the official upon whom properly devolved the duty of doing the act performed, in which case the provisions of the next preceding article shall be applicable."

The provisions of the next preceding article above mentioned is as follows:

"Any person who by an act or omission causes damage to another by his fault or negligence shall be liable for the damage so done."

The foregoing provisions present two situations:

1. When the state "acts through a special agent".
2. When an act is performed by an official "upon whom previously devolved the duty of doing the act performed".

In the first case, the State is subject to liability for damages caused by the special agent.

In the second case, it is the official, not the State, who is liable for damages caused by the act he performed.

The controversy in this case is narrowed down to the question of whether or not the ECA is the special agent mentioned in article 1903 of the Civil Code.

Our conclusion is that it is.

Paragraph 5 Of article 1903 of the Civil Code distinguishes the special agent from the official with specific duty or duties to perform. Under the meaning of the paragraph, the word official comprises all officials and employees of the government who exercise duties of their respective public offices. All others who are acting by commission of the government belong to the class of special agents, whether individual or juridical bodies.

The ECA was not a branch or office of the government, such as the legislative bodies, the executive offices, or the tribunals. It was an agency set up for specific purposes which were not attainable through the official functions entrust J by law to the government or its branches.

The ECA was one of the groups of special agents created by the government for activities ordinarily ungovernmental in character, such as the Philippine National Bank, the National Development Company, the National Coconut Corporation, the National Tobacco Corporation, and many other government enterprises.

In qualifying the special agent with the adjective "special", the Civil Code aimed at distinguishing it from the regular or ordinary agent of government, which refers to all officers and employees in the public service. There cannot be any dispute that all persons in the active service of the government, regardless of department or branch, are agents of the State or of the people. All of them are properly designated as servants of the people. Servants are agents.

The Civil Code uses the adjective "special", because its authors could not miss the fact that the official, mentioned in paragraph 5 of article 1903, is also an agent.

For all the foregoing, the decision of the Auditor General, dated Oct. 3, 1946, denying petitioner's claim should be set aside, not only because it is not supported by law, but because it is premised on the totalitarian philosophy of the State's immunity for whatever wrong it may perpetrate.

The Auditor General should be ordered to grant appellant's claim in the amount that may be supported by evidence, to present which, the Auditor General shall first give opportunity to claimant.

We dissent from the majority decision, which appears to be based on a gratuitous assumption, unsupported by fact and by law.

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