

**SWITZERLAND GENERAL INSURANCE COMPANY, LTD.,
PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES,
DEFENDANT-APPELLEE.**

G.R. No. L-27389. March 30, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

There cannot be the slightest doubt that the appealed order of dismissal of the lower court dated December 28, 1966 on the ground that defendant-appellee Republic of the Philippines cannot be sued without its consent is free from the taint of any legal infirmity. The lower court had no other alternative after our decision, promulgated eleven days earlier in *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*[1] reiterated such a principle in the most unqualified terms. This appeal is thus devoid of any prospect of success.

The facts, according to the brief of plaintiff-appellant Switzerland General Insurance, follow: "On or about May 29, 1964, the ocean vessel SS 'Pioneer Mart' discharged and delivered to defendant-appellee Republic of the Philippines, through its subsidiary Customs Arrastre Service being then the operator of the arrastre service at the Port of Manila, cargo consisting of Seven (7) Drums and Four (4) Bags Raw Materials for Paint Manufacture which was shipped by Diethelm and Keller (U.S.A.), Limited of New York, U.S.A., consigned to the order of Ed. A. Keller & Co., Ltd. of Manila, and covered by American Pioneer Line Bill of Lading No. 44, dated April 24, 1964. The cargo has an invoice of US\$721.62 and insured with plaintiff against loss and, damage." [2] It was then alleged in such brief that defendant-appellee Republic of the Philippines delivered the aforesaid cargo to its consignee, which sustained losses or damages in the amount of P834.26. [3] As plaintiff-appellant paid such amount to the consignee, it was subrogated to its rights. Notwithstanding demands made however, defendant-appellee refused to pay. There was a suit filed in the City Court of Manila, with plaintiff-appellant obtaining a favorable judgment. On appeal, however, to the Court of First Instance of Manila, the case was dismissed. As above noted, such an outcome was predictable. Deference to our *Mobil* decision called for such a judgment.

The doctrine of non-suability recognized in this jurisdiction even prior to the effectivity of the Constitution [4] is a logical corollary of the positivist concept of law which to paraphrase Holmes negates the assertion of any legal right as against the state, in itself the source of the law on which such a right may be predicated. [5] Nor is this all. Even if such a principle does give rise to problems considering the vastly expanded role of government enabling it to engage in business pursuits to promote the general welfare, it is not obeisance to the analytical school of thought alone that calls for its continued applicability. Why it must continue to be so, even if the matter be viewed sociologically, set forth in *Providence Washington Insurance Co. v. Republic* [6] thus: "Nonetheless, a continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if, such a fundamental principle were abandoned and the avail-ability of judicial remedy were not thus restricted. With the well known propensity on the part of our people to go to court, at the least

provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined. "

Nor is injustice thereby caused private parties. They could still proceed to seek collection of their money claims by pursuing the statutory remedy of having the Auditor-General pass upon them subject to appeal to judicial tribunals for final adjudication.[7] We could thus correctly conclude as we did in the cited Providence Washington Insurance decision: "Thus the doctrine of non-suability of the government without its consent, as it has operated in practice, hardly lends itself to the charge that it could be the fruitful parent of in-justice considering the vast and ever-widening scope of state activities at present being undertaken. Whatever difficulties for private claimants may still exist, is, from an objective appraisal of all factors, minimal. In the balancing of interests, so unavoidable in the determination of what principles must prevail if government is to satisfy the public weal, the verdict must be, as it has been these so Many years, for its continuing recognition as a fundamental postulate of constitutional law."

WHEREFORE, the order of dismissal of the lower court, dated December 28, 1966 and the order denying the motion for reconsideration, dated February 4, 1967, are affirmed. With costs against plaintiff-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee, and Villamor, JJ., concur.
Barredo, J., no part.

[1] L-23139, 18 SCRA 1120. *Firemen's Fund Insurance Co. v. United States Line Co.*, L-26533, Jan. 30, 1970 is the fortieth case that relied on the Mobil doctrine.

[2] Brief for the plaintiff-appellant, p. 2.

[3] *Ibid.*, p. 3.

[4] Cf. *Merrit v. Government of the Philippine Islands*, 34 Phil. 311 (1916) and *Campania General de Tabacos v. Government of the Philippine Islands*, 45 Phil. 663 (1924).

[5] Cf. *Kawananakoa v. Polyblank*, 205 US 349 (1907).

[6] L-26386, September 30, 1969, 29 SCRA 598.

[7] Act No. 3083 (1923) and Commonwealth Act No. 327 (1938).

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