

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HONORABLE AMANTE P. PURISIMA, THE PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA (BRANCH VII), AND YELLOW BALL FREIGHT LIN...***G.R. No. L-36084. August 31, 1977*

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

The jurisdictional issue raised by Solicitor General Estelito P. Mendoza on behalf of the Republic of the Philippines in this certiorari and prohibition proceeding arose from the failure of respondent Judge Amante P. Purisima of the Court of First Instance of Manila to apply the well-known and oft-reiterated doctrine of the non-suability of a State, including its offices and agencies, from suit without its consent. It was so alleged in a motion to dismiss filed by defendant Rice and Corn Administration in a pending civil suit in the sala of respondent Judge for the collection of a money claim arising from an alleged breach of contract, the plaintiff being private respondent Yellow Ball Freight Lines, Inc.[1] Such a motion to dismiss was filed on September 7, 1972. At that time, the leading case of *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*,[2] where Justice Bengzon stressed the lack of jurisdiction of a court to pass on the merits of a claim against any office or entity acting as part of the machinery of the national government unless consent be shown, had been applied in 53 other decisions.[3] There is thus more than sufficient basis for an allegation of jurisdictional infirmity against the order of respondent Judge denying the motion to dismiss dated October 4, 1972.[4] What is more, the position of the Republic has been fortified with the explicit affirmation found in this provision of the present Constitution: "The State may not be sued without its consent." [5]

The merit of the petition for certiorari and prohibition is thus obvious.

1. There is pertinence to this excerpt from *Switzerland General Insurance Co., Ltd. v. Republic of the Philippines*: [6] "The doctrine of non-suability recognized in this jurisdiction even prior to the effectivity of the [1935] Constitution 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. 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, was set forth in *Providence Washington Insurance Co. v. Republic* 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 availability 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.' "[7] It only remains to be added that under the present Constitution which, as noted,

expressly reaffirmed such a doctrine, the following decisions had been rendered: *Del Mar v. The Philippine Veterans Administration*;<sup>[8]</sup> *Republic v. Villazor*;<sup>[9]</sup> *Sayson v. Singson*;<sup>[10]</sup> and *Director of the Bureau of Printing v. Francisco*.<sup>[11]</sup>

2. Equally so, the next paragraph in the above opinion from the Switzerland General Insurance Company decision is likewise relevant: "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. 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 injustice, 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.'"<sup>[12]</sup>

3. Apparently respondent Judge was misled by the terms of the contract between the private respondent, plaintiff in his sala, and defendant Rice and Corn Administration which, according to him, anticipated the case of a breach of contract within the parties and the suits that may thereafter arise.<sup>[13]</sup> The consent, to be effective though, must come from the State acting through a duly enacted statute as pointed out by Justice Bengzon in *Mobil*. Thus, whatever counsel for defendant Rice and Corn Administration agreed to had no binding force on the government. That was clearly beyond the scope of his authority. At any rate, Justice Sanchez, in *Ramos v. Court of Industrial Relations*,<sup>[14]</sup> was quite categorical as to its "not [being] possessed of a separate and distinct corporate existence. On the contrary, by the law of its creation, it is an office directly 'under the Office of the President of the Philippines.'"<sup>[15]</sup>

WHEREFORE, the petition for certiorari is granted and the resolution of October 4, 1972 denying the motion to dismiss filed by the Rice and Corn Administration nullified and set aside and the petition for prohibition is likewise granted restraining respondent Judge from acting on Civil Case No. 79082 pending in his sala except for the purpose of ordering its dismissal for lack of jurisdiction. The temporary restraining order issued on February 8, 1973 by this Court is made permanent except for the above-mentioned purpose of definitely terminating this case. Costs against Yellow Ball Freight Lines, Inc.

Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.  
Barredo, J., did not take part.

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[1] Petition, Annex H.

[2] L-23139, December 17, 1966, 18 SCRA 1120.

[3] *Insurance Company of North America v. Republic*, L-24520, July 11, 1967, 20 SCRA 648, was the first case citing *Mobil* with approval. The last opinion came from the pen of Chief Justice Concepcion deciding therein the appeals in *Union Insurance Society of Canton, Ltd. v. Republic*, L-26409, 46 SCRA 120; *Domestic Insurance Company of the Philippines v. Republic*, L-26550, 46 SCRA 121; *Insurance Company of North America v. Republic*, L-26587, 46 SCRA 121; *British Traders Insurance Co., Ltd. v. Barber Line, Macondray and Co., Inc.*, L-31157, 46 SCRA 121, the decisions being pro-mulgated on July 31, 1972.

[4] *Ibid*, Annex J.

[5] Article XV, Section 16.

[6] L-27389, March 30, 1970, 32 SCRA 227.

[7] Ibid, 228-229. The classic formulation of Holmes is found in *Kawananakoa v. Polybank*, 205 US 349 (1907). It is worded thus: "A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." The Providence Washington Insurance Company decision, L-26386, Sept. 30, 1969 is reported in 29 SCRA 598.

[8] L-27299, June 27, 1973, 51 SCRA 340.

[9] L-30671, November 28, 1973, 54 SCRA 83.

[10] L-30044, December 19, 1973, 54 SCRA 282.

[11] L-31337, December 20, 1973, 54 SCRA 324.

**[12] 32 SCRA 227, 229-230.**

[13] Petition, Annex J, 2.

[14] L-22753, December 18, 1967, 21 SCRA 1283.

[15] Ibid, 1287.

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