

DALE SANDERS, AND A.S. MOREAU, JR., PETITIONERS, VS. HON. REGINO T. VERIDIANO II, AS PRESIDING JUDGE, BRANCH I, COURT OF FIRST INSTANCE OF ZAMBALES, OLONGAPO CITY, ANTHONY M. RO...

G.R. No. L-46930. June 10, 1988

Ponente: CRUZ, J.

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CRUZ, J.:

The basic issue to be resolved in this case is whether or not the petitioners were performing their official duties when they did the acts for which they have been sued for damages by the private respondents. Once this question is decided, the other answers will fall into place and this petition need not detain us any longer than it already has.

Petitioner Sanders was, at the time the incident in question occurred, the special services director of the U.S. Naval Station (NAVSTA) in Olongapo City.[1] Petitioner Moreau was the commanding officer of the Subic Naval Base, which includes the said station.[2] Private respondent Rossi is an American citizen with permanent residence in the Philippines,[3] as so was private respondent Wyer who died two years ago.[4] They were both employed as gameroom attendants in the special services department of the NAVSTA, the former having been hired in 1971 and the latter in 1969.[5]

On October 3, 1975, the private respondents were advised that their employment had been converted from permanent full-time to permanent part-time, effective October 18, 1975.[6] Their reaction was to protest this conversion and to institute grievance proceedings conformably to the pertinent rules and regulations of the U.S. Department of Defense. The result was a recommendation from the hearing officer who conducted the proceedings for the reinstatement of the private respondents to permanent full-time status plus backwages. The report on the hearing contained the observation that "Special Services management practices an autocratic form of supervision." [7]

In a letter addressed to petitioner Moreau on May 17, 1976 (Annex "A" of the complaint). Sanders disagreed with the hearing officer's report and asked for the rejection of the abovestated recommendation. The letter contained the statements that: a) "Mr. Rossi tends to alienate most co-workers and supervisors"; b) "Messrs. Rossi and Wyers have proven, according to their immediate supervisors, to be difficult employees to supervise"; and c) "even though the grievants were under oath not to discuss the case with anyone, (they) placed the records in public places where others not involved in the case could hear."

On November 7, 1975, before the start of the grievance hearings, a letter (Annex "B" of the complaint) purportedly coming from petitioner Moreau as the commanding general of the U.S. Naval Station in Subic Bay was sent to the Chief of Naval Personnel explaining the change of the private respondent's employment status and requesting concurrence therewith. The letter did not carry his signature but was signed by W.B. Moore, Jr. "by direction." presumably of Moreau.

On the basis of these antecedent facts, the private respondent filed in the Court of First Instance of Olongapo City a complaint for damages against the herein petitioners on November 8, 1976.[8] The plaintiffs claimed that the letters contained libelous imputations that had exposed them to ridicule and caused them mental anguish and that the prejudgment of the grievance proceedings was an invasion of their personal and proprietary rights. The private respondents made it clear that the petitioners were being sued in their private or personal capacity. However, in a motion to dismiss filed under a special appearance, the petitioners argued that the acts complained of were performed by them in the discharge of their official duties and that, consequently, the court had no jurisdiction over them under the doctrine of state immunity.

After extensive written arguments between the parties, the motion was denied in an order dated March 8, 1977,[9] on the main ground that the petitioners had not presented any evidence that their acts were official in nature and not personal torts; moreover, the allegation in the complaint was that the defendants had acted maliciously and in bad faith. The same order issued a writ of preliminary attachment, conditioned upon the filing of a P100,000.00 bond by the plaintiffs, against the properties of petitioner Moreau, who allegedly was then about to leave the Philippines. Subsequently, to make matters worse for the defendants, petitioner Moreau was declared in default by the trial court in its order dated August 9, 1977. The motion to lift the default order on the ground that Moreau's failure to appear at the pre-trial conference was the result of some misunderstanding, and the motion for reconsideration of the denial of the motion to dismiss, which was filed by the petitioners' new lawyers, were denied by the respondent court on September 7, 1977.

This petition for certiorari, prohibition and preliminary injunction was thereafter filed before this Court, on the contention that the above-narrated acts of the respondent court are tainted with grave abuse of discretion amounting to lack of jurisdiction.

We return now to the basic question of whether the petitioners were acting officially or only in their private capacities when they did the acts for which the private respondents have sued them for damages.

It is stressed at the outset that the mere allegation that a government functionary is being sued in his personal capacity will not automatically remove him from the protection of the law of public officers and, if appropriate, the doctrine of state immunity. By the same token, the mere invocation of official character will not suffice to insulate him from suability and liability for an act imputed to him as a personal tort committed without or in excess of his authority. These well-settled principles are applicable not only to the officers of the local state but also where the person sued in its courts pertains to the government of a foreign state, as in the present case.

The respondent judge, apparently finding that the complained acts were *prima facie* personal and tortious, decided to proceed to trial to determine *inter alia* their precise character on the strength of the evidence to be submitted by the parties. The petitioners have objected, arguing that no such evidence was needed to substantiate their claim of jurisdictional immunity. Pending resolution of this question, we issued a temporary restraining order on September 26, 1977, that has since then suspended the proceedings in this case in the court *a quo*.

In past cases, this Court has held that where the character of the act complained of can be determined from the pleadings exchanged between the parties before the trial, it is not necessary for the court to require them to belabor the point at a trial still to be conducted. Such a proceeding would be superfluous, not to say unfair to the defendant who is subjected to unnecessary and avoidable inconvenience.

Thus, in *Baer v. Tizon*[10] we held that a motion to dismiss a complaint against the commanding general of the Olongapo Naval Base should not have been denied because it had been sufficiently shown that the act for which he was being sued was done in his official capacity on behalf of the American government. The United States had not given its consent to be sued. It was the reverse situation in *Syquia v. Almeda Lopez*,[11] where we sustained

the order of the lower court granting a motion to dismiss a complaint against certain officers of the U.S. armed forces also shown to be acting officially in the name of the American government. The United States had also not waived its immunity from suit. Only three years ago, in *United States of America v. Ruiz*,^[12] we set aside the denial by the lower court of a motion to dismiss a complaint for damages filed against the United States and several of its officials, it appearing that the act complained of was governmental rather than proprietary, and certainly not personal. In these and several other cases,^[13] the Court found it redundant to prolong the proceedings after it had become clear that the suit could not prosper because the acts complained of were covered by the doctrine of state immunity.

It is abundantly clear in the present case that the acts for which the petitioners are being called to account were performed by them in the discharge of their official duties. Sanders, as director of the special services department of NAVSTA, undoubtedly had supervision over its personnel, including the private respondents, and had a hand in their employment, work assignments, discipline, dismissal and other related matters. It is not disputed that the letter had written was in fact a reply to a request from his superior, the other petitioner, for more information regarding the case of the private respondents.^[14] Moreover, even in the absence of such request, he still was within his rights in reacting to the hearing officer's criticism — in effect a direct attack against him — that Special Services was practicing "an autocratic form of supervision."

As for Moreau, what he is claimed to have done was write the Chief of Naval Personnel for concurrence with the conversion of the private respondents' type of employment even before the grievance proceedings had even commenced. Disregarding for the nonce the question of its timeliness, this act is clearly official in nature, performed by Moreau as the immediate superior of Sanders and directly answerable to Naval Personnel in matters involving the special services department of NAVSTA. In fact, the letter dealt with the financial and budgetary problems of the department and contained recommendations for their solution, including the re-designation of the private respondents. There was nothing personal or private about it.

Given the official character of the above-described letters, we have to conclude that the petitioners were, legally speaking, being sued as officers of the United States government. As they have acted on behalf of that government, and within the scope of their authority, it is that government, and not the petitioners personally, that is responsible for their acts. Assuming that the trial can proceed and it is proved that the claimants have a right to the payment of damages, such award will have to be satisfied not by the petitioners in their personal capacities but by the United States government as their principal. This will require that government to perform an affirmative act to satisfy the judgment, viz*, the appropriation of the necessary amount to cover the damages awarded, thus making the action a suit against that government without its consent.

There should be no question by now that such complaint cannot prosper unless the government sought to be held ultimately liable has given its consent to be sued. So we have ruled not only in *Baer* but in many other decisions where we upheld the doctrine of state immunity as applicable not only to our own government but also to foreign states sought to be subjected to the jurisdiction of our courts. ^[15]

The practical justification for the doctrine, as Holmes put it, is that "there can be no legal right against the authority which makes the law on which the right depends."^[16] In the case of foreign states, the rule is derived from the principle of the sovereign equality of states which wisely admonishes that *par in parem non habet imperium* and that a contrary attitude would "unduly vex the peace of nations."^[17] Our adherence to this precept is formally expressed in Article II, Section 2. of our Constitution, where we reiterate from our previous charters that the Philippines "adopts the generally accepted principles of international law as part of the law of the land."

All this is not to say that in no case may a public officer be sued as such without the previous consent of the state.

To be sure, there are a number of well-recognized exceptions. It is

clear that a public officer may be sued as such to compel him to do an act required by law, as where, say, a register of deeds refuses to record a deed of sale;^[18] or to restrain a Cabinet member, for example, from enforcing a law claimed to be unconstitutional;^[19] or to compel the national treasurer to pay damages from an already appropriated assurance fund; ^[20] or the commissioner of internal revenue to refund tax overpayments from a fund already available for the purpose;^[21] or, in general, to secure a judgment that the officer impleaded may satisfy by himself without the government itself having to do a positive act to assist him. We have also held that where the government itself has violated its own laws, the aggrieved party may directly implead the government even without first filing his claim with the Commission on Audit as normally required, as the doctrine of state immunity "cannot be used as an instrument for perpetrating an injustice."^[22]

This case must also be distinguished from such decisions as *Festejo v. Fernando*,^[23] where the Court held that a bureau director could be sued for damages on a personal tort committed by him when he acted without or in excess of authority in forcibly taking private property without paying just compensation therefor although he did convert it into a public irrigation canal. It was not necessary to secure the previous consent of the state, nor could it be validly impleaded as a party defendant, as it was not responsible for the defendant's unauthorized act.

The case at bar, to repeat, comes under the rule and not under any of the recognized exceptions. The government of the United States has not given its consent to be sued for the official acts of the petitioners, who cannot satisfy any judgment that may be rendered against them. As it is the American government itself that will have to perform the affirmative act of appropriating the amount that may be adjudged for the private respondents, the complaint must be dismissed for lack of jurisdiction.

The Court finds that, even under the law of public officers, the acts of the petitioners are protected by the presumption of good faith, which has not been overturned by the private respondents. Even mistakes concededly committed by such public officers are not actionable as long as it is not shown that they were motivated by malice or gross negligence amounting to bad faith.^[24] This, too, is well-settled.^[25] Furthermore, applying now our own penal laws, the tetterers come under the concept of privileged communications and are not punishable.^[26] let alone the fact that the resented remarks are not defamatory by our standards. It seems the private respondents have overstated their case.

A final consideration is that since the questioned acts were done in the Olongapo Naval Base by the petitioners in the performance of their official duties and the private respondents are themselves American citizens, it would seem only proper for the courts of this country to refrain from taking cognizance of this matter and to treat it as coming under the internal administration of the said base.

The petitioners' counsel have submitted a memorandum replete with citations of American cases, as if they were arguing before a court of the United States. The Court is bemused by such attitude. While these decisions do have persuasive effect upon us, they can at best be invoked only to support our own jurisprudence, which we have developed and enriched on the basis of our own persuasions as a people, particularly since we became independent in 1946.

We appreciate the assistance foreign decisions offer us, and not only from the United States but also from Spain and other countries from which we have derived some if not most of our own laws. But we should not place undue and fawning reliance upon them and regard them as indispensable mental crutches without which we cannot come to our own decisions through the employment of our own endowments. We live in a different ambience and must decide our own problems in the light of our own interests and needs, and of our qualities and even idiosyncrasies as a people, and always with our own concept of law and justice.

The private respondents must, if they are still so minded, pursue their claim against the petitioners in accordance with the laws of the United States, of which they are all citizens and under whose jurisdiction the alleged offenses were committed. Even assuming that our own laws are applicable, the United States government has not decided to give its consent to be sued in our courts, which therefore has not acquired the competence to act on the said claim.

WHEREFORE, the petition is GRANTED. The challenged orders dated March 8, 1977, August 9, 1977, and September 7, 1977, are SET ASIDE. The respondent court is directed to DISMISS Civil Case No. 2077-O. Our Temporary restraining order of September 26, 1977, is made PERMANENT. No costs.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 2, 26.

[2] Ibid.

[3] Id.,

[4] Id., p. 319.

[5] Id., pp. 4, 27, 91.

[6] Id., pp. 5, 91.

[7] Id., pp. 5, 28, 91

[8] Id., pp. 26-34.

[9] Id., pp. 90-94.

[10] 57 SCRA 1.

[11] 84 Phil. 312.

[12] 136 SCRA 487.

[13] *Lim v. Brownell, et al.*, 107 Phil. 344; *Parreño v. McGranery*, 92 Phil. 79 1; *Lim v. Nelson*, 87 Phil. 328; *Marvel Building Corp. v. Philippine War Damage Commission*, 85 Phil. 27.

[14] Rollo, pp. 35-40.

[15] *Syquia v. Almeda Lope*., supra; *Marvel Building Corp. v. Philippine War Damage Commission*, supra; *Lim v. Nelson*, supra; *Philippine Alien Property Administration v. Castelo*. 89 Phil. 568; *Parreno v. McGranery*, supra; *Johnson v. Turner*, 94 Phil. 807 - all cited in *Bacr* case; *United States of America v. Ruiz*, supra.

[16] *Kawanakoa v. Polybank*. 205 U.S. 349.

[17] *De Haber v. Queen of Portugal*, 17 Q.B. 171

[18] *Krivenko v. Register of Deeds*, 79 Phil. 461.

[19] *Javellana v. Executive Secretary*. 50 SCRA 30; *Ichong v. Hernandez*, 101 Phil. 1155.

[20] Treasurer of the Philippines v. Court of Appeals. G.R. No. L-42805, August 31, 1987.

[21] National Development Company v. Commissioner of Internal Revenue. 151 SCRA-472.

[22] Amigable v. Cuenca, 43 SCRA 360, reiterating Ministerio v. Court of First Instance of Cebu, 40 SCRA 464.

[23] 50 O.G. 1556.

[24] Philippine Racing Club., et al, v, Bonifacio, et al., 109 Phil, 233.

[25] Cabungcal, et al. v. Cordova, et al., 11 SCRA 584, cited in Mabutol v. Pascual. 124 SCRA 867: Mindanao Realty Corp v. Kintanar, 6 SCRA 814: U.S v. Santos, 36 Phil. 853.

[26] Art. 354, par, 1. Revised Penal Code: see also U.S v. Bustos, 37 Phil 731: and Deano v. Godinez, 12 SCRA 483.

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