

**PROVIDENCE WASHINGTON INSURANCE CO.,
PLAINTIFF-APPELLANT, VS. REPUBLIC OF THE PHILIPPINES AND
BUREAU OF CUSTOMS, DEFENDANTS-APPELLEES.**

G.R. No. L-26386. September 30, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

Providence Washington Insurance Co. filed, on October 21, 1966, its brief as appellant against an order of the lower court dismissing its suit for the non-delivery of thirty cases of steel files, which cargo was insured by it against loss and damage, naming as defendants the Republic of the Philippines and the Bureau of Customs as the operator of the arrastre service, thus rendering unavoidable the invocation of the well-settled doctrine of non-suability of the government. Less than two months later, on December 17, 1966, our decision in *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service* was promulgated.[1] We there explicitly held: "The Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, pursuant to express legislative mandate and as a necessary incident of its prime governmental function, is immune from suit, there being no statute to the contrary."

As of this date, thirty-six subsequent cases, certainly a figure far from unimpressive, have been similarly decided, expressly reaffirming the above ruling of governmental immunity from suit without its consent.[2] The futility of this appeal is quite apparent. We affirm the lower court order of dismissal.

The doctrine of non-suability thus holds undisputed sway. Its primacy appears to be undeniable. For a suit of this character to prosper, there must be a showing of consent either in express terms or by implication through the use of statutory language too plain to be misinterpreted. Its absence being obvious, the lower court acted correctly.

Nor did the *Mobil* decision blaze a new trail. So it has been from the time the Constitution took effect in 1935. *Bull v. Yatco*, a 1939 decision during the Commonwealth, spoke to that effect.[3] Adherence to such a view is reflected in the various cases decided after independence before the *Mobil Exploration* case.[4] The classic formulation of Holmes of this doctrine of non-suability thus bears restatement: "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." [5]

This is not to deny that while indeed logical and far from im-practical the doctrine does give rise to problems considering how widely immersed in matters hitherto deemed outside its sphere the government is at present. Nor is it likely considering its expanding role, demanded by the times and warranted by the Constitution, that a halt would be called to many of its activities, at times unavoidably adversely affecting private rights. Nonetheless, a continued ad-herence 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.

At any rate, in case of a money claim arising from contract, express or implied, which could serve as a basis for civil action between private parties, such a consent has been given by a statute enacted by the Philippine legislature, even before the Constitution took effect and still applicable at present.[6] The procedure provided for in such a statute[7] was made more expeditious by a Commonwealth Act, enabling the party or entity, who feels aggrieved by the final decision of the Auditor General required to decide the claim within sixty days, having the right to go to this Court for final adjudication.[8] It is worthy of note likewise that in the pursuit of its activities affecting business, the government has increasingly relied on private corporations possessing the power to sue and be sued.[9]

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.

WHEREFORE, the order of dismissal of the lower court of May 23, 1966 is affirmed. With costs against plaintiff-appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Capistrano, and Teehankee, JJ., concur.

Barredo, J., did not take part.

Reyes, JBL, J., on official trip.

[1] 18 SCRA 1120.

[2] Insurance Company of North America v. Republic, 20 SCRA 648 (1967); Insurance Company of North America v. Republic, 20 SCRA 699 (1967); Manila Electric Co. v. Customs Arrastre Service, 20 SCRA 767 (1967); The Shell Refining Co. (Phil.) Inc. v. Manila Port Service, 20 SCRA 919 (1967); Equitable Insurance & Casualty Co. Inc. v. Smith Bell & Co., 20 SCRA 1121 (1967); Insurance Company of North America v. Republic, 20 SCRA 1159 (1967); Insurance Company of North America v. Republic, 21 SCRA 40 (1967); Philippine First Ins. Co., Inc. v. Customs Arrastre Service, 21 SCRA 49 (1967); Insurance Company of North America v. Republic, 21 SCRA 125 (1967); Hartford Fire Insurance Co. v. Customs Arrastre Service, 21 SCRA 461 (1967); American Insurance Co., Ltd. v. Republic, 21 SCRA 464 (1967); Northern Assurance Co., Ltd. v. Republic, 21 SCRA 476 (1967); Insurance Company of North America v. Republic, 21 SCRA 463 (1967); American Insurance Co. v. Republic, 21 SCRA 466 (1967); Fireman's Fund Insurance Co. v. Republic, 21 SCRA 474 (1967); Champion Auto Supply Co. v. Bureau of Customs, 21 SCRA 460 (1967); Fireman's Fund Insurance Co. v. Republic, 21 SCRA 470 (1967); Insurance Company of North America v. Republic, 21 SCRA 472 (1967); Insurance Company of North America v. Warner Barnes & Co. Ltd., 21 SCRA 765 (1967); American Insurance Co. v. Republic, 21 SCRA 854 (1967); Home Insurance Co. v. U.S. Lines Co., 21 SCRA 863 (1967); Royal Insurance Co. v. American Pioneer Line, 21 SCRA 847 (1967); Hartford Fire Ins. Co. v. P.D. Marchessini & Co. (New York), 21 SCRA 860 (1967); Insurance Company of North America v. Republic, 21 SCRA 887 (1967); Atlantic Mutual Insurance Co. v. Republic, 21 SCRA 869 (1967); Domestic Insurance Co. of the Phil. v. Barber Lines, 21 SCRA 961 (1967); Philippine Postal Savings Bank v. Court of Industrial Relations, 21 SCRA 1331 (1967); Caltex (Phil.) Inc. v. Customs Arrastre Service, 21 SCRA 1390 (1967); The London Assurance v.

Republic, 22 SCRA 513 (1968); Domestic Insurance Co. of the Phil. v. American Pioneer Line, 22 SCRA 831 (1968); Domestic Insurance Co. of the Phil. v. Republic, 25 SCRA 231 (1968); Insurance Co. of North America v. Osaka Shosen Kaisha, 27 SCRA 780 (1969); Union Insurance Society of Canton, Ltd. v. Republic, 27 SCRA 446 (1969); Rizal Surety and Ins. Co. v. Customs Arrastre Service, 27 SCRA 1016 (1969); Insurance Company of North America v. Republic, L-26979, May 29, 1969, and Insurance Company of North America v. Republic, L-27188, May 29, 1969.

[3] 67 Phil. 728.

[4] Cf. Metran v. Paredes, 79 Phil. 819 (1948); Treasurer of the Philippines v. Encarnacion, 93 Phil. 610 (1953); Angat River Irrigation System v. Angat River Workers' Union, 102 Phil. 789 (1957); Bureau of Printing v. Bureau of Printing Employees Asso., 1 SCRA 340 (1961).

[5] Kawanakoa v. Polyblank, 205 U.S. 349 (1907).

[6] Act No. 3083, An Act defining the conditions under which the Government of the Philippine Islands may be sued (1923).

[7] Ibid, Sections 2 and 3.

[8] Commonwealth Act No. 327 reads thus: "An Act Fixing the Time Within Which the Auditor General Shall Render His Decisions and Prescribing the Manner of Appeal Therefrom. Be it enacted by the National Assembly of the Philippines: Section 1. In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty days, exclusive of Sundays and holidays, after their pre-sentation. If said accounts or claims need reference to other persons, office or offices, or to a party interested, the period aforesaid shall be counted from the time the last comment necessary to a proper decision is received by him. With respect to the accounts of accountable officers, the Auditor General shall act on the same within one hundred days after their submission, Sundays and holidays excepted. In case of accounts or claims already submitted to but still pending decision by the Auditor General on or before the approval of this Act, the periods provided in this section shall commence from the date of such approval. Sec. 2. The party aggrieved by the final decision of the Auditor General in the settlement of an account or claim, may within thirty days from receipt of the decision, take an appeal in writing: (a) To the President of the United States, pending the final and complete withdrawal of her sovereignty over the Philippines, or (b) To the President of the Philippines, or (c) To the Supreme Court of the Philippines if the appellant is a private person or entity. If there are more than one appellant, all appeals shall be taken to the same authority resorted to by the first appellant. From a decision adversely affecting the interests of the Government, the appeal may be taken by the proper head of the department or in case of local governments by the head of the office or branch of the Government immediately concerned. The appeal shall specifically set forth the particular action of the Auditor General to which exception is taken with the reasons and authorities relied on for reversing such decision. Sec. 3. This Act shall take effect upon its approval." (June 18, 1938).

[9] Cf. Manila Hotel Employees Association v. Manila Hotel Company, 73 Phil. 374 (1941); National Airports Corporation v. Teodoro, 91 Phil. 203. (1952).

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