

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. JUDGE JAVIER PABALAN, JUDGE OF THE COURT OF FIRST INSTANCE, BRANCH III, LA UNION, AGOO TOBACCO PLANTERS ASSOCIATION, INC., PHILIPP...

G.R. No. L-33112. June 15, 1978

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

The reliance of petitioner Philippine National Bank in this certiorari and prohibition proceeding against respondent Judge Javier Pabalan who issued a writ of execution,[1] followed thereafter by a notice of garnishment of the funds of respondent Philippine Virginia Tobacco Administration,[2] deposited with it, is on the fundamental constitutional law doctrine of non-suability of a state, it being alleged that such funds are public in character. This is not the first time petitioner raised that issue. It did so before in *Philippine National Bank v. Court of Industrial Relations*,[3] decided only last January. It did not meet with success, this Court ruling in accordance with the two previous cases of *National Shipyard and Steel Corporation*[4] and *Manila Hotel Employees Association v. Manila Hotel Company*,[5] that funds of public corporations which can sue and be sued were not exempt from garnishment. As respondent Philippine Virginia Tobacco Administration is likewise a public corporation possessed of the same attributes,[6] a similar outcome is indicated. This petition must be dismissed.

It is undisputed that the judgment against respondent Philippine Virginia Tobacco Administration had reached the stage of finality. A writ of execution was, therefore, in order. It was accordingly issued on December 17, 1970.[7] There was a notice of garnishment for the full amount mentioned in such writ of execution in the sum of P12,724.66.[8] In view of the objection, however, by petitioner Philippine National Bank on the above ground, coupled with an inquiry as to whether or not respondent Philippine Virginia Tobacco Administration had funds deposited with petitioner's La Union branch, it was not until January 25, 1971 that the order sought to be set aside in this certiorari proceeding was issued by respondent Judge.[9] Its dispositive portion reads as follows: "Conformably with the foregoing, it is now ordered, in accordance with law, that sufficient funds of the Philippine Virginia Tobacco Administration now deposited with the Philippine National Bank, La Union Branch, shall be garnished and delivered to the plaintiff immediately to satisfy the Writ of Execution for one-half of the amount awarded in the decision of November 16, 1970." [10] Hence this certiorari and prohibition proceeding.

As noted at the outset, petitioner Philippine National Bank would invoke the doctrine of non-suability. It is to be admitted that under the present Constitution, what was formerly implicit as a fundamental doctrine in constitutional law has been set forth in express terms: "The State may not be sued without its consent." [11] If the funds appertained to one of the regular departments or offices in the government, then, certainly, such a provision would be a bar to garnishment. Such is not the case here. Garnishment would lie. Only last January, as noted in the opening paragraph of this decision, this Court, in a case brought by the same petitioner precisely invoking such a doctrine, left no doubt that the funds of public corporations could properly be made the object of a notice

of garnishment. Accordingly, this petition must fail.

1. The alleged grave abuse of discretion, the basis of this certiorari proceeding, was sought to be justified on the failure of respondent Judge to set aside the notice of garnishment of funds belonging to respondent Philippine Virginia Tobacco Administration. This excerpt from the aforesaid decision of *Philippine National Bank v. Court of Industrial Relations* makes manifest why such an argument is far from persuasive: "The premise that the funds could be spoken of as public in character may be accepted in the sense that the People's Homesite and Housing Corporation was a government-owned entity. It does not follow though that they were exempt from garnishment. *National Shipyard and Steel Corporation v. Court of Industrial Relations* is squarely in point. As was explicitly stated in the opinion of the then Justice, later Chief Justice, Concepcion: 'The allegation to the effect that the funds of the NASSCO are public funds of the government, and that, as such, the same may not be garnished, attached or levied upon, is untenable for, as a government-owned and controlled corporation, the NASSCO has a personality of its own, distinct and separate from that of the Government. It has — pursuant to Section 2 of Executive Order No. 356, dated October 23, 1950 * * *, pursuant to which the NASSCO has been established — "all the powers of a corporation under the Corporation Law. . . ." Accordingly, it may sue and be sued and may be subjected to court processes just like any other corporation (Section 13, Act No. 1459, as amended.)' . . . To repeat, the ruling was the appropriate remedy for the prevailing party which could proceed against the funds of a corporate entity even if owned or controlled by the government." [12]

2. The *National Shipyard and Steel Corporation* decision was not the first of its kind. The ruling therein could be inferred from the judgment announced in *Manila Hotel Employees Association v. Manila Hotel Company*, decided as far back as 1941. [13] In the language of its ponente, Justice Ozaeta: "On the other hand, it is well-settled that when the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation. (*Bank of the United States v. Planters' Bank*, 9 Wheat. 904, 6 L. ed. 244). By engaging in a particular business thru the instrumentality of a corporation, the government divests itself pro hac vice of its sovereign character, so as to render the corporation subject to the rules of law governing private corporations." [14] It is worth mentioning that Justice Ozaeta could find support for such a pronouncement from the leading American Supreme Court case of *United States v. Planters' Bank*, [15] with the opinion coming from the illustrious Chief Justice Marshall. It was handed down more than one hundred fifty years ago, 1824 to be exact. It is apparent, therefore, that petitioner Bank could not legally set forth as a bar or impediment to a notice of garnishment the doctrine of non-suability.

WHEREFORE, this petition for certiorari and prohibition is dismissed. No costs.

Barredo, Antonio, Aquino, and Santos, JJ., concur.

Concepcion, J., on leave.

[1] Petition, Statement of Facts, par. 6, Annex A.

[2] Ibid, par. 12, Annex S.

[3] L-32667, January 31, 1978.

[4] 118 Phil. 782 (1963).

[5] 73 Phil. 374 (1941).

[6] Cf. *Philippine Virginia Tobacco Administration v. Court of Industrial Relations*, L-32052, July 25, 1975, 65 SCRA 416.

[7] Annex B to Petition.

[8] Annex C to Petition.

[9] Annex S to Petition.

[10] Ibid, 11.

[11] Article XV, Section 16, Constitution of the Philippines.

[12] L-32667, January 31, 1978. The National Shipyard decision, as previously mentioned, was promulgated in 1963 and reported in 118 Phil. 782.

[13] 73 Phil. 374.

[14] Ibid, 388-389.

[15] 9 Wheat, 904, 6 L. ed. 244.

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