

**CORNELIO S. RUPERTO AND RAYMUNDO NATIVIDAD, DECEASED,
SUBSTITUTED BY MAGDALENA P. DE NATIVIDAD, ETC.,
PETITIONERS AND APPELLANTS, VS. MAJOR GENERAL GEORGE F.
MOORE, ETC., COL. S...**

G.R. No. L-3745. April 30, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This case stems from an order issued by Major General George F. Moore revoking the initial recognition granted to petitioners as guerrilla officers on the ground that they failed to attain the standards required to substantiate their recognition as officers of the Philippine Army. In that order the names of petitioners were ordered deleted from the roster of the American Dominion Forces in the Philippines.

As an aftermath of said revocation order, petitioners filed the present action in the Court of First Instance of Manila seeking in substance the nullification of said order and their reinstatement as guerrilla officers.

Respondents filed a motion to dismiss on the ground that the court had no jurisdiction over the subject matter of the action and over the persons of the respondents.

On August 26, 1949, the Court dismissed the petition for lack of jurisdiction, but gave petitioners a period of five (5) days within which to submit the law on which they predicate their cause of action. And having failed to do so, the Court, on January 31, 1950, issued an order dismissing the case definitely. From this order petitioners appealed.

The order of General Moore which gave rise to the action under consideration reads as follows:

"22 Sept. 1947

SUBJECTS REVOCATION OF RECOGNITION

"TO: Chief of Staff
Army of the Philippines
Camp Murphy, Quezon City

"1. Extensive reinvestigation and reconsideration of American Dominion Forces in the Philippines, a guerrilla organization recognized by the United States Sixth Army in the strength of one hundred and sixteen (116) officers and men, reveals that Raymundo Natividad and Cornelio S. Ruperto, authorized to be included as Majors on the recognized roster of the subject unit by letter, Headquarters AFWESPAC, dated 22 December 1945, failed to disclose sufficient evidence to warrant their initial recognition.

"2. Protracted reinvestigation revealed that Mr. Natividad and Mr. Ruperto failed signally to attain the standards required to substantiate official recognition as members of the Philippine Army in the Service of the Armed forces of the United States. Their record of claimed service was not established by sufficient acceptable

evidence. Close scrutiny of all available evidence revealed that Mr. Natividad and Mr. Ruperto failed summarily to discharge satisfactorily their responsibilities as officers of a combat unit.

"3. It is therefore announced that the recognition of Raymundo Natividad and Cornelio S. Ruperto, as members of the American Dominion Forces in the Philippines, is revoked. Mr. Natividad and Mr. Ruperto are declared in the status of unrecognized guerrillas without any period of recognition whatsoever and denied all rights and privileges that pertain, or may later pertain, to a member of the Philippine Army in the service of the Armed Forces of the United States.

"4. It is requested that the names of Raymundo Natividad and Cornelio S. Ruperto be deleted from the recognized roster of the American Dominion Forces in the Philippines.

t/ GEO F. MOORE
Major Gen. U.S. Army
Commanding"

It should be noted that the above order was issued on September 22, 1947. It should also be noted that the purpose of the order is to revoke the recognition given to petitioners as guerrilla officers attached to the guerrilla organization known as American Dominion Forces in the Philippines, which recognition was accorded them by special orders issued by General Douglas MacArthur on June 19, 1945. It should likewise be noted that, as a result of the advent of the Philippine independence, which was proclaimed on July 4, 1946, the Philippine Army was released from the service of the Armed Forces of the United States and was turned over to the Commonwealth of the Philippines on June 30, 1946, and since then the processing of guerrilla organizations became the sole concern and responsibility of the Philippine Army. It is for this reason that petitioners felt, and now contend, that the action taken by General Moore in revoking their recognition as guerrilla officers is illegal and unconstitutional in that it deprived them of a right already acquired by them without due process of law, and that that action was taken by General Moore after he has already lost control and Jurisdiction over the Philippine Army. Hence, they Invoke the aid of our courts in order that the wrong done might be rightened and their rights vindicated.

It is apparent that the present action has for its purpose to have the order of General Moore reconsidered and set aside and a new one entered recognizing petitioners as guerrilla officers so that they may be entitled to their emoluments or back pay. In the final analysis, therefore, the aim of petitioners is to press a claim against the treasury of the United States which is tantamount to an action against the government of that country. Since this government cannot be sued without its consent, unless there is an express legislation on the matter, it is evident that this Court has no jurisdiction to entertain this case.

"On the basis of the foregoing consideration we are of the belief and we hold that the real party defendant in interest is the Government of the United States of America; that any judgment for back or increased rentals or damages will have to be paid not by the defendants Moore and Tillman and their 64 co-defendants but by the said U.S. Government. On the basis of the ruling in the case of *Land v. Dollar* already cited, and on what we have already stated, the present action must be considered as one against the U.S. Government. It is clear that the courts of the Philippines including the Municipal Court of Manila have no jurisdiction over the present case for unlawful detainer. The question of lack of jurisdiction was raised and Interposed at the very beginning of the action. The U.S. Government has not given its consent to the filing of this suit which is essentially against her, tho not in name. Moreover, this is not only a case of a citizen filing a suit against his own government without the latter's consent but it is of citizen filing an action against a foreign government without said government's consent, which renders more obvious the lack of jurisdiction of courts of his country. The principles of law behind this rule are so elementary and of such general acceptance that we deem it unnecessary to cite authorities in support thereof." (*Syquia vs. Lopez et al.*, 47 Off. Gaz., 665; 84 Phil., 312). (Italics supplied).

Much as we sympathize with the plight of petitioners who apparently have the law on their side, nothing can be done in their favor because they have adopted a wrong procedure. What they should have done is to ask for a reconsideration of the order from the military authorities within the period provided by law for that purpose for they should know that the deadline for acting on guerrilla cases was June 30, 1948. They cannot claim ignorance of this matter, nor advance any valid excuse for their inaction, not only because of their personal interest, but because it has been the subject of press releases by the United States Army. It was a matter well known to the military. That was the most logical course open to them for the redress of their grievance. This they failed to do. To grant them the relief they seek in the present case is not within the province of this Court.

Wherefore, the order appealed from is affirmed, with costs against appellants.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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