

**DONALD BAER, COMMANDER U.S. NAVAL BASE, SUBIC BAY,
OLONGAPO, ZAMBALES, PETITIONER, VS. HON. TITO V. TIZON, AS
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BATAAN,
AND EDGAR...**

G.R. NO. L-24294. May 03, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

There is nothing novel about the question raised in this certiorari proceeding against the then Judge Tito V. Tizon, filed by petitioner Donald Baer, then Commander of the United States Naval Base, Subic Bay, Olongapo, Zambales, seeking to nullify the orders of respondent Judge denying his motion to dismiss a complaint filed against him by the private respondent, Edgardo Gener, on the ground of sovereign immunity of a foreign power, his contention being that it was in effect a suit against the United States, which had not given its consent. The answer given is supplied by a number of cases coming from this Tribunal starting from a 1945 decision, *Raquiza vs. Bradford*[1] to *Johnson vs. Turner*,[2] promulgated in 1954. The doctrine of immunity from suit is of undoubted applicability in this jurisdiction. It cannot be otherwise, for under the 1935 Constitution, as now, it is expressly made clear that the Philippines "adopts the generally accepted principles of international law as part of the law of the Nation." [3] As will subsequently be shown, there was a failure on the part of the lower court to accord deference and respect to such a basic doctrine, a failure compounded by its refusal to take note of the absence of any legal right on the part of petitioner. Hence, certiorari is the proper remedy.

The facts are not in dispute. On November 17, 1964, respondent Edgardo Gener, as plaintiff, filed a complaint for injunction with the Court of First Instance of Bataan against petitioner, Donald Baer, Commander of the United States Naval Base in Olongapo. It was docketed as Civil Case No. 2984 of the Court of First Instance of Bataan. He alleged that he was engaged in the business of logging in an area situated in Barrio Mabayo, Municipality of Morong, Bataan and that the American Naval Base authorities stopped his logging operations. He prayed for a writ of preliminary injunction restraining petitioner from interfering his logging operations. A restraining order was issued by respondent Judge on November 23, 1964.[4] Counsel for petitioner, upon instructions of the American Ambassador to the Philippines, entered their appearance for the purpose of contesting the jurisdiction of respondent Judge on the ground that the suit was one against a foreign sovereign without its consent.[5] Then, on December 12, 1964, petitioner filed a motion to dismiss, wherein such ground was reiterated. It was therein pointed out that he is the chief or head of an agency or instrumentality of the United States of America, with the subject matter of the action being official acts done by him for and in behalf of the United States of America. It was added that in directing the cessation of logging operations by respondent Gener within the Naval Base, petitioner was entirely within the scope of his authority and official duty, the maintenance of the security of the Naval Base and of the installations therein being the first concern and most important duty of the Commander of the Base.[6] There was, on December 14, 1964, an opposition and reply to petitioner's motion to dismiss by respondent Gener, relying on the principle that "a private citizen claiming title and right of possession of certain

property may, to recover possession of said property, sue as individuals, officers and agents of the Government, who are said to be illegally withholding the same from him, though in doing so, said officers and agents claim that they are acting for the Government." That was his basis for sustaining the jurisdiction of respondent Judge.[7] Petitioner, thereafter, on January 12, 1965, made a written offer of documentary evidence, including certified copies of telegrams of the Forestry Director to Forestry personnel in Balanga, Bataan dated January 8 and January 11, 1965, directing immediate investigation of illegal timber cutting in Bataan and calling attention to the fact that the records of the office show no new renewal of timber license or temporary extension permits.[8] The above notwithstanding, respondent Judge, on January 12, 1965, issued an order granting respondent Gener's application for the issuance of a writ of preliminary injunction and denying petitioner's motion to dismiss the opposition to the application for a writ of preliminary injunction.[9]

A motion for reconsideration having proved futile, this petition for certiorari was filed with this Court. The prayer was for the nullification and setting aside of the writ of preliminary injunction issued by respondent Judge in the aforesaid Civil Case No. 2984 of the Court of First Instance of Bataan. A resolution of March 17, 1965 was issued by this Court requiring respondents to file an answer and upon petitioner's posting a bond of P5,000.00 enjoining them from enforcing such writ of preliminary injunction. The answer was duly forthcoming. It sought to meet the judicial question raised by the legal proposition that a private citizen claiming title and right of possession of a certain property may, to recover the same, sue as individuals officers and agents of the government alleged to be illegally withholding such property even if there is an assertion on their part that they are acting for the government. Support for such a view is found in the American Supreme Court decisions of *United States vs. Lee*[10] and *Land vs. Dollar*. [11] Thus the issue is squarely joined as to whether or not the doctrine of immunity from suit without consent is applicable. Thereafter, extensive memoranda were filed both by petitioner and respondents. In addition, there was a manifestation and memorandum of the Republic of the Philippines as *amicus curiae* where, after a citation of American Supreme Court decisions going back to *Schooner Exchange vs. M'faddon*[12] an 1812 decision, to *United States vs. Belmont*, [13] decided in 1937, the plea was made that the petition for certiorari be granted.

A careful study of the crucial issue posed in this dispute yields the conclusion, as already announced, that petitioner should prevail.

1. The invocation of the doctrine of immunity from suit of a foreign state without its consent is appropriate. More specifically, insofar as alien armed forces is concerned, the starting point is *Raquiza vs. Bradford*, a 1945 decision.[14] In dismissing a habeas corpus petition for the release of petitioner confined by American army authorities, Justice Hilado, speaking for the Court, cited from *Coleman vs. Tennessee*, [15] where it was explicitly declared: "It is well settled that a foreign army, permitted to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place." [16] Two years later, in *Tubb and Tedrow vs. Griess*, [17] this Court relied on the ruling in *Raquiza vs. Bradford* and cited in support thereof excerpts from the works of the following authoritative writers: Vattel, Wheaton, Hall, Lawrence, Oppenheim, Westlake, Hyde, and McNair and Lauterpacht. [18] Accuracy demands the clarification that after the conclusion of the Philippine-American Military Bases Agreement, the treaty provisions should control on such matter, the assumption being that there was a manifestation of the submission to jurisdiction on the part of the foreign power whenever appropriate. [19] More to the point is *Syquia vs. Almeda Lopez*, [20] where plaintiffs as lessors sued the Commanding General of the United States Army in the Philippines, seeking the restoration to them of the apartment buildings they owned leased to United States armed forces stationed in the Manila area. A motion to dismiss on the ground of non-suability was filed and upheld by respondent Judge. The matter was taken to this Court in a mandamus proceeding. It failed. It was the ruling that respondent Judge acted correctly considering that the "action must be considered as one against the U.S.

Government." [21] The opinion of Justice Montemayor continued: "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, though 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 a citizen filing an action against a foreign government without said government's consent, which renders more obvious the lack of jurisdiction of the 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." [22] Then came *Marvel Building Corporation vs. Philippine War Damage Commission*, [23] where respondent, a United States agency established to compensate damages suffered by the Philippines during World War II was held as falling within the above doctrine as the suit against it "would eventually be a charge against or financial liability of the United States Government because ..., the Commission has no funds of its own for the purpose of paying money judgments." [24] The *Syquia* ruling was again explicitly relied upon in *Marquez Lim vs. Nelson*, [25] involving a complaint for the recovery of a motor launch, plus damages, the special defense interposed being "that the vessel belonged to the United States Government, that the defendants merely acted as agents of said Government, and that the United States Government is therefore the real party in interest." [26] So it was in *Philippine Alien Property Administration vs. Castelo*, [27] where it was held that a suit against the Alien Property Custodian and the Attorney General of the United States involving vested property under the Trading with the Enemy Act is in substance a suit against the United States. To the same effect is *Parreno vs. McGranery*, [28] as the following excerpt from the opinion of Justice Tuason clearly shows: "It is a widely accepted principle of international law, which is made a part of the law of the land (Article II, Section 3 of the Constitution), that a foreign state may not be brought to suit before the courts of another state or its own courts without its consent." [29] Finally, there is *Johnson vs. Turner*, [30] an appeal by the defendant, then Commanding General, Philippine Command (Air Force, with office at Clark Field) from a decision ordering the return to plaintiff of the confiscated military payment certificates known as scrip money. In reversing the lower court decision, this Tribunal, through Justice Montemayor, relied on *Syquia vs. Almeda Lopez*, [31] explaining why it could not be sustained.

The solidity of the stand of petitioner is therefore evident. What was sought by private respondent and what was granted by respondent Judge amounted to an interference with the performance of the duties of petitioner in the base area in accordance with the powers possessed by him under the Philippine-American Military Bases Agreement. This point was made clear in these words: "Assuming, for purposes of argument, that the Philippine Government, through the Bureau of Forestry, possesses the 'authority to issue a Timber License to cut logs' inside a military base, the Bases Agreement subjects the exercise of rights under a timber license issued by the Philippine Government to the exercise by the United States of its rights, power and authority of control within the bases; and the findings of the Mutual Defense Board, an agency of both the Philippine and United States Governments, that 'continued logging operation by Mr. Gener within the boundaries of the U.S. Naval Base would not be consistent with the security and operation of the Base,' is conclusive upon the respondent Judge. . . The doctrine of state immunity is not limited to cases which would result in a pecuniary charge against the sovereign or would require the doing of an affirmative act by it. Prevention of a sovereign from doing an affirmative act pertaining directly and immediately to the most important public function of any government – the defense of the state – is equally as untenable as requiring it to do an affirmative act." [32] That such an appraisal is not opposed to the interpretation of the relevant treaty provision by our government is made clear in the aforesaid manifestation and memorandum as *amicus curiae*, wherein it joined petitioner for the grant of the remedy prayed for.

2. There should be no misinterpretation of the scope of the decision reached by this Court. Petitioner, as the Commander of the United States Naval Base in Olongapo, does not possess diplomatic immunity. He may therefore be proceeded against in his personal capacity, or when the action taken by him cannot be imputed to the government which he represents. Thus, after the Military Bases Agreement, in *Miquiabas vs. Commanding General*[33] and *Dizon vs. The Commanding General of the Philippine-Ryukus Command*,[34] both of them being habeas corpus petitions, there was no question as to the submission to jurisdiction of the respondents. As a matter of fact, in *Miquiabas vs. Commanding General*,[35] the immediate release of the petitioner was ordered, it being apparent that the general court martial appointed by respondent Commanding General was without jurisdiction to try petitioner. Thereafter, in the cited cases of *Syquia*, *Marquez Lim*, and *Johnson*, the parties proceeded against were American army commanding officers stationed in the Philippines. The insuperable obstacle to the jurisdiction of respondent Judge is that a foreign sovereign without its consent is haled into court in connection with acts performed by it pursuant to treaty provisions and thus impressed with a governmental character.

3. The infirmity of the actuation of respondent Judge becomes even more glaring when it is considered that private respondent had ceased to have any right of entering within the base area. This is made clear in the petition in these words: "In 1962, respondent Gener was issued by the Bureau of Forestry an ordinary timber license to cut logs in Barrio Mabayo, Morong, Bataan. The license was renewed on July 10, 1963. In 1963, he commenced logging operation inside the United States Naval Base, Subic Bay, but in November 1963 he was apprehended and stopped by the Base authorities from logging inside the Base. The renewal of his license expired on July 30, 1964, and to date his license has not been renewed by the Bureau of Forestry. * * * In July 1964, the Mutual Defense Board, a joint Philippines-United States agency established pursuant to an exchange of diplomatic notes between the Secretary of Foreign Affairs and the United States Ambassador to provide 'direct liaison and consultation between appropriate Philippine and United States authorities on military matters of mutual concern,' advised the Secretary of Foreign Affairs in writing that: 'The enclosed map shows that the area in which Mr. Gener was logging definitely falls within the boundaries of the base. This map also depicts certain contiguous and overlapping areas whose functional usage would be interfered with by the logging operations.'"[36] Nowhere in the answer of respondents, nor in their memorandum, was this point met. It remained unrefuted.

WHEREFORE, the writ of certiorari prayed for is granted, nullifying and setting aside the writ of preliminary injunction issued by respondent Judge in Civil Case No. 2984 of the Court of First Instance of Bataan. The injunction issued by this Court on March 18, 1965 enjoining the enforcement of the aforesaid writ of preliminary injunction of respondent Judge is hereby made permanent. Costs against private respondent Edgardo Gener.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.
Barredo, J., took no part.

[1] 75 Phil. 50.

[2] 94 Phil. 807. The other cases from *Raquiza vs. Bradford* follow: *Tubb and Tedrow vs. Griess*, 78 Phil. 249 (1947); *Miquiabas vs. Commanding General*, 80 Phil. 262 (1948); *Dizon vs. Phil. Ryukus Command*, 81 Phil. 286 (1948); *Syquia vs. Almeda Lopez*, 84 Phil. 312 (1949); *Marvel Building Corp. vs. Philippine War Damage Commission*, 85 Phil. 27 (1949); *Marquez Lim vs. Nelson*, 87 Phil. 328 (1950); *Philippine Alien Property Administration vs. Castelo*, 89 Phil. 568 (1951); *Parreno vs. McGranery*, 92 Phil. 791 (1953).

[3] According to Article II, Sec. 3 of the 1935 Constitution: "The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as part of the law of the Nation."

The same provision is found in the present Constitution. Article II, Sec. 3, reading thus: "The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

[4] Petition, par 2(a) and (b).

[5] Ibid, par. 2(d).

[6] Ibid, par. 2(e).

[7] Ibid, par. 2(f).

[8] Ibid, par. 2(i).

[9] Ibid, par. 2(j).

[10] 106 US 196 (1882).

[11] 330 US 731 (1947).

[12] 7 Cranch 116.

[13] 301 US 324.

[14] 75 Phil. 50.

[15] 97 US 509 (1879).

[16] 75 Phil. 50, 60.

[17] 78 Phil. 249 (1947).

[18] Ibid, 252-254.

[19] Cf. *People vs. Acierto*, 92 Phil. 534 (1953) and *People vs. Gozo*, L-36409, Oct. 26, 1973, 53 SCRA 476.

[20] 84 Phil. 312 (1949).

[21] Ibid, 323.

[22] Ibid.

[23] 85 Phil. 27 (1949).

[24] Ibid, 32.

[25] 87 Phil. 328 (1950).

[26] Ibid, 329.

[27] 89 Phil. 568 (1951).

[28] 92 Phil. 791 (1953).

[29] Ibid, 792. The excerpt continues with a reference to the *Syquia*, *Marvel Building Corporation*, and *Marquez Lim* decisions.

[30] 94 Phil. 807 (1954).

[31] 84 Phil. 312 (1949).

[32] Petition, paragraph 2(2).

[33] 80 Phil. 262 (1948).

[34] 81 Phil. 286 (1948).

[35] 80 Phil. 262 (1948).

[36] Petition, paragraph 3.

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