

DEPARTMENT OF AGRICULTURE, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, ET AL., RESPONDENTS.

G.R. No. 104269. November 11, 1993

Ponente: VITUG J.

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VITUG J.:

For consideration are the incidents that flow from the familiar doctrine of non-suability of the state.

In this petition for certiorari, the Department of Agriculture seeks to nullify the Resolution,[1] dated 27 November 1991, of the National Labor Relations Commission (NLRC), Fifth Division, Cagayan de Oro City, denying the petition for injunction, prohibition and mandamus that prays to enjoin permanently the NLRC's Regional Arbitration Branch X and Cagayan de Oro City Sheriff from enforcing the decision[2] of 31 May 1991 of the Executive Labor Arbiter and from attaching and executing on petitioner's property.

The Department of Agriculture (herein petitioner) and Sultan Security Agency entered into a contract[3] on 01 April 1989 for security services to be provided by the latter to the said governmental entity. Save for the increase in the monthly rate of the guards, the same terms and conditions were also made to apply to another contract, dated 01 May 1990, between the same parties. Pursuant to their arrangements, guards were deployed by Sultan Agency in the various premises of the petitioner.

On 13 September 1990, several guards of the Sultan Security Agency filed a complaint for underpayment of wages, non-payment of 13th month pay, uniform allowances, night shift differential pay, holiday pay and overtime pay, as well as for damages,[4] before the Regional Arbitration Branch X of Cagayan de Oro City, docketed as NLRC Case No. 10-09-00455-90 (or 10-10-00519-90, its original docket number), against the Department of Agriculture and Sultan Security Agency.

The Executive Labor Arbiter rendered a decision on 31 May 1991, finding herein petitioner jointly and severally liable with Sultan Security Agency for the payment of the money claims, aggregating P266,483.91, of the complainant security guards. The petitioner and Sultan Security Agency did not appeal the decision of the Labor Arbiter. Thus, the decision became final and executory.

On 18 July 1991, the Labor Arbiter issued a writ of execution,[5] commanding the City Sheriff to enforce and execute the judgment against the property of the two respondents. Forthwith, or on 19 July 1991, the City Sheriff levied on execution the motor vehicles of the petitioner, i.e., one (1) unit Toyota Hi-Ace, one (1) unit Toyota Mini Cruiser, and one (1) unit Toyota Crown.[6] These units were put under the custody of Zacharias Roa, the property custodian of the petitioner, pending their sale at public auction or the final settlement of the case, whichever would come first.

A petition for injunction, prohibition and mandamus, with prayer for preliminary writ of injunction, was filed by the petitioner with the National Labor Relations Commission ("NLRC"), Cagayan de Oro, alleging, inter alia, that the writ issued was effected without the Labor Arbiter having duly acquired jurisdiction over the petitioner, and

that, therefore, the decision of the Labor Arbiter was null and void and all actions pursuant thereto should be deemed equally invalid and of no legal effect. The petitioner also pointed out that the attachment or seizure of its property would hamper and jeopardize petitioner's governmental functions to the prejudice of the public good.

On 27 November 1991, the NLRC promulgated its assailed resolution; viz:

"WHEREFORE, premises considered, the following orders are issued:

1. The enforcement and execution of the judgments against petitioner in NLRC RABX Cases Nos. 10-10-00455-90; 10-10-0481-90 and 10-10-00519-90 are temporarily suspended for a period of two (2) months, more or less, but not extending beyond the last quarter of calendar year 1991 to enable petitioner to source and raise funds to satisfy the judgment awards against it;
2. Meantime, petitioner is ordered and directed to source for funds within the period above-stated and to deposit the sums of money equivalent to the aggregate amount it has been adjudged to pay jointly and severally with respondent Sultan Security Agency with the Regional Arbitration Branch X, Cagayan de Oro City within the same period for proper disposition;
3. In order to ensure compliance with this order, petitioner is likewise directed to put up and post sufficient surety and supersedeas bond equivalent to at least to fifty (50%) percent of the total monetary award issued by a reputable bonding company duly accredited by the Supreme Court or by the Regional Trial court of Misamis Oriental to answer for the satisfaction of the money claims in case of failure or default on the part of petitioner to satisfy the money claims;
4. The City Sheriff is ordered to immediately release the properties of petitioner levied on execution within ten (10) days from notice of the posting of sufficient surety or supersedeas bond as specified above. In the meanwhile, petitioner is assessed to pay the costs and/or expenses incurred by the City Sheriff, if any, in connection with the execution of the judgments in the above-stated cases upon presentation of the appropriate claims or vouchers and receipts by the city Sheriff, subject to the conditions specified in the NLRC Sheriff, subject to the conditions specified in the NLRC Manual of Instructions for Sheriffs;
5. The right of any of the judgment debtors to claim reimbursement against each other for any payments made in connection with the satisfaction of the judgments herein is hereby recognized pursuant to the ruling in the Eagle Security case, (supra). In case of dispute between the judgment debtors, the Executive Labor Arbiter of the Branch of origin may upon proper petition by any of the parties conduct arbitration proceedings for the purpose and thereby render his decision after due notice and hearings;
7. Finally, the petition for injunction is Dismissed for lack of basis. The writ of preliminary injunction previously issued in Lifted and Set Aside and in lieu thereof, a Temporary Stay of Execution is issued for a period of two (2) months but not extending beyond the last quarter of calendar year 1991, conditioned upon the posting of a surety or supersedeas bond by petitioner with in ten (10) days from notice pursuant to paragraph 3 of this disposition. The motion to admit the complaint in intervention is Denied for lack of merit while the motion to dismiss the petition filed by Duty Sheriff in Noted.

SO ORDERED."

In this petition for certiorari, the petitioner charges the NLRC with grave abuse of discretion for refusing to quash the writ of execution. The petitioner faults the NLRC for assuming jurisdiction over a money claim against the Department, which, it claims, falls under the exclusive jurisdiction of the Commission on Audit. More importantly, the petitioner asserts, the NLRC has disregarded the cardinal rule on the non-suability of the State.

The private respondents, on the other hand, argue that the petitioner has impliedly waived its immunity from suit by concluding a service contract with Sultan Security Agency.

The basic postulate enshrined in the constitution that "(t)he State may not be sued without its consent,"[7] reflects nothing less than a recognition of the sovereign character of the State and an express affirmation of the unwritten rule effectively insulating it from the jurisdiction of courts.[8] It is based on the very essence of sovereignty. As has been aptly observed, by Justice Holmes, 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.[9] True, the doctrine, not too infrequently, is derisively called "the royal prerogative of dishonesty" because it grants the state the prerogative to defeat any legitimate claim against it by simply invoking its non-suability.[10] We have had occasion to explain in its defense, however, that a continued adherence to the doctrine of non-suability cannot be deplored, for the loss of governmental efficiency and the obstacle to the performance of its multifarious functions would be far greater in severity than the inconvenience that may be caused private parties, if such fundamental principle is to be abandoned and the availability of judicial remedy is not to be accordingly restricted.[11]

The rule, in any case, is not really absolute for it does not say that the state may not be sued under any circumstance. On the contrary, as correctly phrased, the doctrine only conveys, "the state may not be sued without its consent;" its clear import then is that the State may at times be sued.[12] The States consent may be given either expressly or impliedly. Express consent may be made through a general law[13] or a special law.[14] In this jurisdiction, the general law waiving the immunity of the state from suit is found in Act No. 3083, where the Philippine government "consents and submits to be sued upon any money claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties." [15] Implied consent, on the other hand, is conceded when the State itself commences litigation, thus opening itself to a counterclaim[16] or when it enters into a contract.[17] In this situation, the government is deemed to have descended to the level of the other contracting party and to have divested itself of its sovereign immunity. This rule, relied upon by the NLRC and the private respondents, is not, however, without qualification. Not all contracts entered into by the government operate as a waiver of its non-suability; distinction must still be made between one which is executed in the exercise of its sovereign function and another which is done in its proprietary capacity.[18]

In *United States of America vs. Ruiz*,[19] where the questioned transaction dealt with the improvements on the wharves in the naval installation at Subic Bay, we held:

"The traditional rule of immunity exempts a State from being sued in the courts of another State without its consent or waiver. This rule is a necessary consequence of the principles of independence and equality of States. However, the rules of International Law are not petrified; they are constantly developing and evolving. And because the activities of states have multiplied, it has been necessary to distinguish them - between sovereign and governmental acts (*jure imperii*) and private, commercial and proprietary acts (*jure gestionis*) The result is that State immunity now extends only to acts *jure imperii*. The restrictive application of State immunity is now the rule in the United States, the United Kingdom and other states in Western Europe.

* * * * *

The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into business contracts. It does not apply where the contracts relates to the exercise of its sovereign functions. In this case the projects are an integral part of the naval base which is devoted to the defense of both the United States and the Philippines, indisputably a function of the government of the highest order; they are not utilized for nor dedicated to commercial or business purposes."

In the instant case, the Department of Agriculture has not pretended to have assumed a capacity apart from its

being a governmental entity when it entered into the questioned contract; nor that it could have, in fact, performed any act proprietary in character.

But, be that as it may, the claims of private respondents, i.e., for underpayment of wages, holiday pay, overtime pay and similar other items, arising from the Contract for Security Services, clearly constitute money claims. Act No. 3083, aforecited, gives the consent of the State to be "sued upon any moneyed claim involving liability arising from contract, express or implied, x x x" Pursuant, however, to Commonwealth Act ("C.A.") No. 327, as amended by Presidential Decree ("P.D.") No. 1445, the money claim should first be brought to the Commission on Audit. Thus, in *Carabao, Inc., vs. Agricultural Productivity Commission*,^[20] we ruled:

"(C)laimants have to prosecute their money claims against the Government under Commonwealth Act 327, stating that Act 3083 stands now merely as the general law waiving the State's immunity from suit, subject to the general limitation expressed in Section 7 thereof that 'no execution shall issue upon any judgment rendered by any Court against the Government of the (Philippines), and that the conditions provided in Commonwealth Act 327 for filing money claims against the Government must be strictly observed."

We fail to see any substantial conflict or inconsistency between the provisions of C.A. No. 327 and the Labor Code with respect to money claims against the State. The Labor Code, in relation to Act No. 3083, provides the legal basis for the State liability but the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in C.A. No. 327, as amended by P.D. 1445.

When the State gives its consent to be sued, it does not thereby necessarily consent to an unrestrained execution against it. Tersely put, when the State waives its immunity, all it does, in effect, is to give the other party an opportunity to prove, if it can, that the State has a liability.^[21] In *Republic vs. Villazor*^[22] this Court, in nullifying the issuance of an alias writ of execution directed against the funds of the Armed Forces of the Philippines to satisfy a final and executory judgment, has explained, thus -

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the correspondent appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.^[23]

WHEREFORE, the petition is GRANTED. The resolution, dated 27 November 1991, is hereby REVERSED and SET ASIDE. The writ of execution directed against the property of the Department of Agriculture is nullified, and the public respondents are hereby enjoined permanently from doing, issuing and implementing any and all writs of execution issued pursuant to the decision rendered by the Labor Arbiter against said petitioner.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Annex "A", Rollo, 23-52.

[2] Annex "C", Ibid., 57-68.

[3] Rollo, 59.

[4] Ibid., 57.

[5] Annex "D", Petition, Rollo, 69.

[6] Annex "E," Ibid., ibid., p. 70.

[7] Article XVI. Section 3 of the Constitution.

[8] Isagani Cruz, Philippine Political Law, 1991, p. 29.

[9] Kawanankoa vs. Polybank, 205 U.S. 353, 51 L. ed. 834.

[10] U.S.A. vs. Guinto, 182 SCRA 644,654/1990/.

[11] Providence Washington Ins. Co. vs. Republic, 29 SCRA 598.

[12] Ibid.

[13] i.e, Commonwealth Act No. 327, as amended by Presidential Decree No. 1445 (Sections 49-50) which requires that all money claims against the government must first be filed with the Commission on Audits which must act upon it within sixty-days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and, in effect, sue the State thereby.

[14] Merritt vs. Government of the Philippines, 34 Phil. 311.

[15] See United States vs. Guinto, 182 SCRA 644, 654, supra.

[16] Froilan vs. Par Oriental Shipping, G.R. No. 6060, 30 September 1950.

[17] Santos vs. Santos, 92 Phil. 281; Lyors vs. United States of America, 104 SCRA 593.

[18] United States of America vs. Guinto, 182 SCRA 644; United States of America vs. Ruiz, 136 SCRA 487/1985/.

[19] 136 SCRA 487.

[20] 35 SCRA 224, 229 /1970/.

[21] Cruz, supra., 44-45.

[22] 54 SCRA 84/1973/.

[23] See also Commissioner of Public Highways vs. San Diego, 31 SCRA 616/1970/ citing among others the following decisions: Merritt vs. Government, 34 Phil. 311/1916/; Visayan Refining Co. vs. Camus, 40 Phil. 550/1919/; Director of Commerce vs. Concepcion, 43 Phil. 384/1922/; Belleng vs. Republic, 9 SCRA, 6/1963/; Republic vs. Palacio, 23 SCRA 899/1968/.

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