PHILIPPINE AGILA SATELLITE INC. AND MICHAELC. U. DE GUZMAN, COMPLAINANTS, VS. JOSEFINA TRINIDAD-LICHAUCO UNDERSECRETARY FOR COMMUNICATIONS, DEPARTMENT OF TRANSPORTATION AND COMM...

G.R. NO. 142362. May 03, 2006

Ponente: TINGA, J.

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TINGA, J.:

This Petition for Review on Certiorari seeks the reversal of the Decision[1] dated 21 February 2000 of the Court of Appeals in C.A. G.R. No. SP 49422. The assailed Decision authorized the dismissal of a civil complaint against respondent Josefina Trinidad-Lichauco (Lichauco), former Undersecretary for Communications of the Department of Transportation and Communication (DOTC), on the premise that the complaint constituted a suit against the State.

A brief rundown of the relevant facts is in order.

Petitioner Philippine Agila Satellite Inc. (PASI) is a duly organized corporation, whose President and Chief Executive Officer is co-petitioner Michael C.U. De Guzman. PASI was established by a consortium of private telecommunications carriers[2] which in 1994 had entered into a Memorandum of Understanding (MOU) with the DOTC, through its then Secretary Jesus Garcia, concerning the planned launch of a Philippine-owned satellite into outer space. Under the MOU, the launch of the satellite was to be an endeavor of the private sector, and the satellite itself to be owned by the Filipino-owned consortium (subsequently organized as PASI).[3] The consortium was to grant the Philippine government one (1) transponder free of charge for the government's exclusive use for non-commercial purpose, as well as the right of first refusal to another one (1) transponder in the Philippine satellite, if available.[4] The Philippine government, through the DOTC, was tasked under the MOU to secure from the International Telecommunication Union the required orbital slot(s) and frequency assignment(s) for the Philippine satellite.

PASI itself was organized by the consortium in 1996. The government, together with PASI, coordinated through the International Telecommunication Union two (2) orbital slots, designated as 161º East Longitude and 153º East Longitude, for Philippine satellites. On 28 June 1996, PASI wrote then DOTC Secretary Amado S. Lagdameo, Jr., seeking for official Philippine government confirmation on the assignment of the two aforementioned Philippine orbital slots to PASI for its satellites, which PASI had designated as the Agila satellites.[5] Secretary Lagdameo, Jr. replied in a letter dated 3 July 1996, confirming "the Philippine Government's assignment of Philippine orbital slots 161E and 153E to [PASI] for its [Agila] satellites."[6]

PASI avers that after having secured the confirmation from the Philippine government, it proceeded with preparations for the launching, operation and management of its satellites, including the availment of loans, the increase in its capital, negotiation with business partners, and an initial payment of US$3.5 Million to the French satellite manufacturer. However, respondent Lichauco, then DOTC Undersecretary for Communications,

allegedly "embarked on a crusade to malign the name of [Michael de Guzman] and sabotage the business of PASI." Lichauco's purported efforts against PASI culminated allegedly in her offering orbital slot 153º East Longitude for bidding to other parties sometime in December 1997, despite the prior assignment to PASI of the said slot.[7] It was later claimed by PASI that Lichauco subsequently awarded the orbital slot to an entity whose indentity was unknown to PASI.[8]

Aggrieved by Lichauco's actions, PASI and De Guzman instituted on 23 January 1998 a civil complaint against Lichauco, by then the Acting Secretary of the DOTC, and the "Unknown Awardee" who was to be the recipient of orbital slot 153º East Longitude. The complaint, alleging three (3) causes of action, was for injunction, declaration of nullity of award, and damages. The first cause of action, for injunction, sought to establish that the award of orbital slot 153º East Longitude should be enjoined since the DOTC had previously assigned the same orbital slot to PASI. The second cause of action, for declaration of nullity of award, averred that the award to the unknown bidder is null and void, as it was rendered by Lichauco beyond her authority.[9]

The third cause of action, for damages, imputed several acts to Lichauco as part of her alleged "crusade" to malign the name of plaintiff [D]e Guzman and sabotage the business of [PASI]:

> 12. xxx
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> (a) On 4 December 1996, in a meeting with the members of the Board of Directors of plaintiff corporation, defendant Lichauco then uttered disparaging and defamatory comments against plaintiff de Guzman. These defamatory remarks triggered efforts from within the plaintiff corporation aimed at ousting plaintiff de Guzman from his position.
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> (b) Defendant Lichauco, then an undersecretary of DOTC, wrote Mr. Jesli Lapuz on 5 December 1996 (barely two days after plaintiff de Guzman wrote him) to deny that the DOTC has assigned the two (2) Philippine orbital slots to plaintiff corporation. Defendant Lichauco falsely asserted that only orbital slot 161 E was assigned to plaintiff, orbital slot 153 E was not.
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> In the same letter, defendant Lichauco branded as FALSE plaintiff de Guzman's claim that "Agila" is a registered corporate name of plaintiff corporation.
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> A copy of the letter is attached as Annex E.
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> (c) Not contented, defendant Lichauco, again for reasons known only to her, and with malice aforethought, made defamatory remarks against plaintiffs during a telecommunications forum held in Makati City sometime in October 1997 in the presence of public officials and business executives.
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> (d) Defendant Lichauco did not spare plaintiff corporation from her unprovoked defamation. Defendant Lichauco arrogantly said that she had asked President Fidel V. Ramos to sue plaintiff Michael de Guzman. With the same degree of arrogance she threatened plaintiff corporation not to use the name "Agila", otherwise she would fight plaintiff corporation and would make sure that the name of Agila would never be given back to plaintiff corporation.
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> (e) To top it all, defendant Lichauco without basis and with evident bad faith, said that plaintiff corporation will never pay its contractors.
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> (f) In December 1997, defendant Lichauco delivered the coup de' grace. Again, acting unilaterally, without prior notice to plaintiff corporation and in gross violation of DOTC's earlier assignment to plaintiff corporation of orbital slot 153 E, defendant Lichauco offered said slot to interested applicants. A copy of the notice of offer is attached as Annex F.
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> 13. Plaintiffs learned of defendant Lichauco's acts after orbital slot 153 E was offered for bidding. To plaintiff

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coproration's knowledge, the orbital slot was eventually awarded to defendant Unknown Awardee.

x x x x[10]

The complaint alleged that since Lichauco's act of offering and awarding orbital slot 153º East Longitude was patently illegal and violative of DOTC's prior commitment to PASI, Lichauco should be enjoined from performing any acts and entering into or executing any agreement or arrangement of whatever nature in connection with the said orbital slot. The complaint also averred that the purported award of the orbital slot to the "Unknown Awardee was illegal, and thus should be declared null and void. Finally, the complaint alleged a cause of action for damages against Lichauco, cast in the following manner:

x x x x

- Defendant Lichauco attacked the good name and reputation of plaintiffs.

- She willfully caused damage to plaintiffs by orchestrating the above-described acts which are contrary to law; morals and basic norms of good faith.

- She interefered with and violated plaintiff corporation's contract with DOTC by offering and awarding orbital slot 153 E to defendant Unknown Awardee.

- Because of defendant Lichauco's reprehensible acts, plaintiffs suffered actual damages of at least P10 million each, for all of which defendant Lichauco should be held liable to pay.

- By reason of defendant Lichauco's illegal and malicious acts, plaintiff corporation's business name and goodwill was tarnished, for which plaintiff corporation should be indemnified by way of moral damages in the amount of at least P10 million.

- For the same reasons, plaintiff de Guzman suffered and continue to suffer extreme mental anguish, serious anxiety, wounded feelings, moral shock and besmirched reputation, for all of which plaintiff de Guzman should be indemnified in the amount of at least P10 million.

- Defendant Lichauco should also be sanctioned, as a deterrent for public good, to pay each plaintiff exemplary damages in the amount of at least P5 million.

- In order to protect and enforce their rights, plaintiffs were compelled to institute this suit, engage the services of counsel and incur litigation expenses, for all of which plaintiffs should be indemnified in the amount of at least P500 Thousand each.[11]

x x x x

In sum, petitioners sought the following reliefs for the three (3) causes of action:

x x x x

3. After trial of the issues, render judgment as follows:

[a] On the first cause of action, making permanent the writ of preliminary injunction;
[b] On the second cause of action, declaring the offer and award of orbital slot 153 E to defendant Unknown Awardee null and void.
[c] On the third cause of action, directing defendant Lichauco to pay the following sums:

- P10 million each to plaintiffs as actual damages;

- P10 million to plaintiff corporation as moral damages;

- P10 million to plaintiff de Guzman as moral damages;

- P5 million each to plaintiffs as exemplary damages;

- P500 Thousand each to plaintiffs as attorney's fees and litigation expenses.

x x x x[12]

The complaint was filed before the Regional Trial Court (RTC) of Mandaluyong City, and subsequently raffled to Branch 214. On 2 February 1998, the RTC issued a temporary restraining order against Lichauco, who received the summons together with the complaint on 28 January 1998. Lichauco failed to file an answer within the reglementary period, but eight (8) days after the lapse thereof, she filed a Manifestation and Motion asking for a new five (5)-day period, or until 25 February 1998, to file a responsive pleading to the complaint. However, she filed instead a Motion to Admit with attached Motion to Dismiss on 27 February 1998. She rooted her prayer for the dismissal of the complaint primarily on the grounds that the suit is a suit against the State which may not be sued without its consent; that the complaint stated no cause of action; and that the petitioners had failed to exhaust administrative remedies by failing to seek recourse with the Office of the President.

In an order[13] dated 14 August 1998, the RTC denied the motion to dismiss. It characterized the defense of state immunity as "at very least a contentious issue which can not be resolved by mere allegations in the pleadings but which can be best threshed out in a litig[i]ous forum where parties are accorded enormous (sic) opportunity to argue for the ascertainment of whether the act complained of are indeed within the parameters and prerogatives of the authority exercising the same."[14] The RTC also noted that the allegations in the complaint regarding the ultimate facts sufficiently presented an ultra vires act of Lichauco, and that she was being sued in her personal capacity. As to the argument pertaining to the non-exhaustion of administrative remedies, the RTC noted that the principle is not an inflexible rule, and may be dispensed with when its application would cause great and irreparable damage or when it would not constitute a plain, speedy and adequate remedy.[15]

Lichauco assailed the RTC order through a Petition for Certiorari under Rule 65 before the Court of Appeals, which subsequently nullified the RTC order in the Decision now assailed before us. The Court of Appeals sustained the contention that the complaint is a suit against the State with the following ratiocination:

The suit is to the mind of this court a suit against the state.

> The notice of offer signed by herein petitioner allegedly tainted with bad faith was done in the exercise of and in pursuance of an official duty. Her duties are as follows:
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> SEC. 10. Powers and Duties of the Undersecretary. The Undersecretary shall:
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> (1) Advise and assist the Secretary in the formulation and implementation of department objectives and policies;
> (2) Oversee all the operational activities of the department for which he shall be responsible to the Secretary;
> (3) Coordinate the programs and projects of the department and be responsible for its economical, efficient and effective administration:

x x x x x x x x x

It is apparent from the above enumeration that the petitioner is directly under and answerable to the DOTC Secretary. We can therefore conclude that her official acts such as the said "notice of offer" was with the blessing and prior approval of the DOTC Secretary himself.

Being an official act, it is also protected by the presumption that the same was performed in good faith and in the regular performance of official duty.

> "Acts in Line of Duty or under Color of Authority. - As a rule, a public officer, whether judicial, quasi-judicial,

> or executive, is not personally liable to one injured in consequence of an act performed within the scope of his official authority, and in the line of his official duty. In order that acts may be done within the scope of official authority, it is not necessary that they be prescribed by statute, or even that they be specifically directed or requested by a superior officer, but it is sufficient if they are done by an officer in relation to matters committed by law to his control or supervision, or that they have more or less connection with such matters, or that they are governed by a lawful requirement of the department under whose authority the officer is acting. Under this principle, state building commissioners who, in obedience to a stature, discharge one who has been employed to construct a state building, take possession of the work, and place it in the hands of another contractor, are not liable to the former contractor in damages, since in so doing they are merely acting in the line of their duty. An officer is not personally responsible for the necessary and unavoidable destruction of goods stored in buildings, when such buildings were destroyed by him in the lawful performance of a public duty imposed on him by a valid and constitutional statute."
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> Error or Mistake in Exercise of Authority. - Where an officer is invested with discretion and is empowered to exercise his judgment in matters brought before him he is sometimes called a quasi-judicial officer, and when so acting he is usually given immunity from liability to persons who may be injured as the result of an erroneous or mistaken decision, however, erroneous judgment may be, provided the acts complained of are done within the scope of the officer's authority, and without willfulness, malice, or corruption." (43 Am. Jur., pp. 85-86).
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> In Sanders vs. Veridiano[[16]], the Supreme Court held:
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> "Given the official character of the above-described letters, we have to conclude that the petitioners were, legally speaking, being sued as officers of the United States government. As they have acted on behalf of that government, and within the scope of their authority, it is that government and not the petitioners personally, that is responsible for their acts. Assuming that the trial can proceed and it is proved that the claimants have a right to the payment of damages, such award will have to be satisfied not by the petitioners in their personal capacities but by the United States government as their principal. This will require that government, viz.: the appropriation of the necessary amount to cover the damages awarded, thus making the action a suit against that government without its consent.
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> There should be no question by now that such complaint cannot prosper unless the government sought to be held ultimately liable has given its consent to be sued. So we have ruled not only in Baer but in many other decisions where we upheld the doctrine of state immunity as applicable not only to our own government but also to foreign States sought to be subjected to the jurisdiction of our courts.

x x x x x x x x x

> The Court finds that, even under the law of public officers, the acts of the petitioners are protected by the presumption of good faith, which has not been overturned by the private respondents. Even mistakes concededly committed by such public officers are not actionable as long as it is not shown that they were motivated by malice or gross negligence amounting to bad faith. This too is well-settled."[17]

Preliminarily, we discuss the procedural grounds cited by petitioners which they assert are sufficient to have caused the dismissal of Lichauco's petition before the Court of Appeals. Petitioners claim that contrary to Section 1, Rule 65 of the 1997 Rules of Civil Procedure, Lichauco failed to attach all pleadings and documents relevant to her petition, and that those that were attached were merely "duplicate original copies." Lichauco counters that for the viability of her petition for certiorari, all that she needed to attach were her motion to dismiss, the RTC orders acting on such motion, her motion for reconsideration of the denial of her motion to dismiss, and petitioners' opposition to said motion for reconsideration. She claims that only these motions and submission were relevant to

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the resolution of her petition.[18]

In her comment, Lichaucho claims that she did not have to attach the complaint to the copy of the petition she sent to the petitioners herein, since the latter obviously retained the original copy of the complaint they filed.[19] However, her petition before the appellate court does not indicate that the same complaint was included as an attachment, and indeed, there is a curious absence of any averment on Lichuaco's part that she indeed attached the said complaint to her petition.[20] Certainly, in a petition for certiorari assailing the denial of a motion to dismiss a complaint, the very complaint itself is a document relevant and pertinent to the special civil action. It should be remembered that unlike in an ordinary appeal that is given due course,[21] the case record is not automatically elevated to the court exercising jurisdiction over a special civil action for certiorari; hence there is an even more impelling need to attach all pleadings and documents to the special civil action, as mandated under Section 1, Rule 65 of the 1997 Rules of Civil Procedure. After all, how could the court a quo properly ascertain whether or not the motion to dismiss itself should have been granted if it did not have a copy of the complaint sought to be dismissed itself.

Nonetheless, the requirement to attach such relevant pleadings under Section 1, Rule 65 is read in relation to Section 3, Rule 46, which states that the failure of the petitioner to comply with any of the documentary requirements, such as the attachment of such relevant pleadings, "shall be sufficient ground for the dismissal of the petition." The procedural rule accords sufficient discretion to the court hearing the special civil action whether or not to dismiss the petition outright for failure to comply with said requirement. If the court does dismiss the petition on that ground, the dismissal would be justifiable under Section 3, Rule 46, and generally such action of the court cannot be assailed as constituting either grave abuse of discretion or reversible error of law. If the court, on the other hand, takes cognizance of the petition despite such lapses, the phrasing of Section 3, Rule 46 sufficiently justifies such adjudicative recourse. Indeed, the ultimate logic behind rules of procedure being the promotion of the objective of securing a just, speedy and inexpensive disposition of every action and proceeding,[22] the higher interests of justice may at times sufficiently warrant the allowance of the petition for certiorari despite such lapses, especially if they are nonetheless correctible through subsequent submissions.

In any event, the Court is willing to overlook Lichauco's failure to attach the complaint in her petition for certiorari before the Court of Appeals, an oversight sadly ignored by the appellate court. There are weighty issues at hand relating to the doctrine of state immunity from suit and the requisites of a motion to dismiss.

There is a connective issue between these two aspects in that if the State is sued without its consent, the corresponding suit must be dismissed. At times, it would be teasingly obvious, even from the moment of the filing of the complaint, that the suit is one against the State. A cursory examination of the caption of the complaint can sometimes betray such proscribed intent, as when the suit is directly initiated against the Republic of the Philippines, any foreign government, or an unincorporated government agency as the named respondents. In such cases, obviously there is need for immediate caution, although if it is somehow established that those respondents had given their consent to be sued, the suit may nonetheless prosper.

The present action was denominated against Lichauco and the unknown awardee, Lichauco was identified in the complaint as "acting Secretary of the [DOTC]."[23] The hornbook rule is that a suit for acts done in the performance of official functions against an officer of the government by a private citizen which would result in a charge against or financial liability to the government must be regarded as a suit against the State itself, although it has not been formally impleaded.[24] However, government immunity from suit will not shield the public official being sued if the government no longer has an interest to protect in the outcome of a suit; or if the liability of the officer is personal because it arises from a tortious act in the performance of his/her duties.

Petitioner insists that Lichauco is being sued for her acts committed in excess of her authority, ultra vires in nature, and tortious in character. The Court of Appeals responded that such acts fell within Lichauco's official duties as DOTC Undersecretary, thus enjoying the presumption that they were performed in good faith and in the regular performance of official duty. This rationale is pure sophistry and must be rejected outright.

We do not doubt the existence of the presumptions of "good faith" or "regular performance of official duty", yet these presumptions are disputable[25] and may be contradicted and overcome by other evidence.[26] Many civil actions are oriented towards overcoming any number of these presumptions, and a cause of action can certainly be geared towards such effect. The very purpose of trial is to allow a party to present evidence overcome the disputable presumptions involved. Otherwise, if trial is deemed irrelevant or unnecessary, owing to the perceived indisputability of the presumptions, the judicial exercise would be relegated to a mere ascertainment of what presumptions apply in a given case, nothing more. Consequently, the entire Rules of Court is rendered as excess verbiage, save perhaps for the provisions laying down the legal presumptions.

If this reasoning of the Court of Appeals were ever adopted as a jurisprudential rule, no public officer could ever be sued for acts executed beyond their official functions or authority, or for tortious conduct or behavior, since such acts would "enjoy the presumption of good faith and in the regular performance of official duty". Indeed, few civil actions of any nature would ever reach the trial stage, if a case can be adjudicated by a mere determination from the complaint or answer as to which legal presumptions are applicable. For example, the presumption that a person is innocent of a wrong is a disputable presumption on the same level as that of the regular performance of official duty.[27] A civil complaint for damages necessarily alleges that the defendant committed a wrongful act or omission that would serve as basis for the award of damages. With the rationale of the Court of Appeals, such complaint can be dismissed upon a motion to dismiss solely on the ground that the presumption is that a person is innocent of a wrong.

So obviously, the Decision of the Court of Appeals cannot receive the imprimatur of this Court. Still, the question of whether Lichauco may validly invoke state immunity from suit to secure the outright dismissal of petitioners' complaint warrants closer examination.

As earlier noted, the complaint alleges three (3) causes of action against Lichauco: one for injunction against her performing any act in relation to orbital slot 153º East Longitude; one for declaration of nullity of award, seeking to nullify the alleged award of orbital slot 153º East Longitude; and one for damages against Lichauco herself. Evidently, the first two causes of action stem from Lichauco's act of offering orbital slot 153º East Longitude for bidding, through the Notice of Offer which was attached to the complaint.

In her Motion to Dismiss, Lichauco asserts that she is being sued for issuing the aforementioned Notice of Offer, which fell within her official functions as DOTC Undersecretary for Communications. She claims that it was Secretary Lagdameo who authorized her to offer orbital slot 153º East Longitude for bidding, and she thus acted well within the scope of her authority to advise and assist the DOTC Secretary in the formulation and implementation of department objectives and policies.

The Notice of Offer cites Department Circular 97-01, signed by then DOTC Secretary Arturo Enrile, as authority for it. The Court has examined the aforementioned Department Circular, issued on 17 October 1997, which establishes the "Guidelines on the Procurement of Orbital Slots and Frequency Registration of Philippine Satellites". Therein, the DOTC is mandated "to conduct a bidding process in case there are competing applications for any one of the assigned or applied-for-orbital slots"[28]. Further, the Department Circular states that "the DOTC shall publish in three newspapers of general circulation a notice of offer for the government assigned, initiated and applied for orbital slots."[29]

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Thus, insofar as the first two causes of action are concerned, Lichauco may have a point when she asserts that they were based on acts which she performed in her capacity as DOTC Undersecretary. But does this necessarily mean that these two causes of action may thus be dismissed on the basis of state immunity of suit?

As stated earlier, it is when the acts done in the performance of official functions by an officer of the government will result in a charge against or financial liability to the government that the complaint must be regarded as a suit against the State itself. However, the distinction must also be raised between where the government official concerned performs an act in his/her official and jurisdictional capacity and where he performs an act that constitutes grave abuse of discretion tantamount to lack of jurisdiction. In the latter case, the Constitution itself assures the availability of judicial review, and it is the official concerned who should be impleaded as the proper party- defendant or respondent.

On this point, our ruling in J.M. Tuazon & Co. v. Land Tenure Administration[30] is material. Petitioners therein had filed a special civil action for prohibition to nullify Republic Act No. 2616, or law that directed the expropriation of the Tatalon Estate in Quezon City. Impleaded as respondents were the officials and government agency tasked to undertake such expropriation. The respondents alleged that the petition for prohibition was actually a suit against the State without its consent. The Court, through then Associate Justice (later Chief Justice) Enrique Fernando, debunked the argument, ruling instead that the petition was within the ambit of judicial review:

> [T]he power of judicial review is granted, if not expressly, at least by clear implication from the relevant provisions of the Constitution. This power may be exercised when the party adversely affected by either a legislative or executive act, or a municipal ordinance for that matter, files the appropriate suit to test its validity. The special civil action of prohibition has been relied upon precisely to restrain the enforcement of what is alleged to be an unconstitutional statute. As it is a fundamental postulate that the Constitution as the supreme law is binding on all governmental agencies, failure to observe the limitations found therein furnishes a sufficient ground for a declaration of nullity of the government measure challenged. The argument then that the government is the adverse party and that, therefore, must consent to its being sued certainly is far from persuasive. x x x x[31]

The Court further noted that it was well-settled for the purpose of obtaining a judicial declaration of nullity, "it is enough if the respondents or defendants named be the government officials who would give operation and effect to official action allegedly tainted with unconstitutionality."[32]

Unlike in J.M. Tuason, the case at bar does not seek to nullify an unconstitutional law or measure. However, the first two causes of action do sufficiently impute grave abuse of discretion against Lichauco in her official capacity. Since judicial review of acts alleged to have been tainted with grave abuse of discretion is guaranteed by the Constitution, it necessarily follows in such instances that it is the official concerned who should be impleaded as defendant or respondent in the appropriate suit.

Moreover, if the suit had been directed against Lichauco alone, and in her personal capacity, yet it sought, as it now does, the nullification of the Notice of Offer or the awards thereon, such remedy could not avail even if granted. Lichauco, in her personal capacity, cannot be directed to set aside the Notice of Offer, the award of the bid, or to issue a new award herself. It is only because Lichauco was sued in her official capacity as the DOTC Undersecretary that she, or her successors in office, could be judicially compelled to act in such fashion.

As to the first two (2) causes of action, the Court rules that the defense of state immunity from suit do not apply since said causes of action cannot be properly considered as suits against the State in constitutional contemplation. These causes of action do not seek to impose a charge or financial liability against the State, but merely the nullification of state action. The prayers attached to these two causes of action are for the revocation of the Notice of Bid and the nullification of the purported award, nothing more. Had it been so that petitioner additionally

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sought damages in relation to said causes of action, the suit would have been considered as one against the State. Had the petitioner impleaded the DOTC itself, an unincorporated government agency, and not Lichauco herself, the suit would have been considered as one against the State. But neither circumstance obtains in this case.

Parenthetically, it may be noted that at the time of the filing of the complaint, Lichauco herself was already the acting head of the DOTC, owing to the sudden death of then Secretary Enrile a few days before. At that stage, any suit seeking to nullify the Notice of Bid and the alleged award to the "Unknown Bidder" should have properly denominated Lichauco as the respondent, and not the DOTC.

Nonetheless, as to the first two causes of action, there was a viable ground to dismiss the complaint: the non-exhaustion of administrative remedies. Indeed, such ground was alleged by Lichauco in her Motion to Dismiss. Yet the principle of non-exhaustion of administrative remedies admits to several exceptions. In its Order denying the motion to dismiss the complaint, the RTC adequately dispensed with the objection, applying the established exceptions to the rule of non-exhaustion of administrative remedies. To wit:

> Turning to the matter pertaining to non-exhaustion of administrative remedies, it is fundamental that this principle is not an inflexible rule. It yields to many accepted exceptions. (Rocamora vs. RTC - Cebu, G.R. No. 65307). As in this case, this principle can be dispensed with when its application would cause great and irreparable damage and when it does not provide a plain, speedy and adequate remedy.
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> When the subject orbital slot 153 E was bidded out to other applicants, the damage and injury plaintiffs stand to suffer was clear, present, and substantiated that this Court was impelled to provide urgent needed measure such as the issuance of writ of injunction against the public defendant. Indeed, under the circumstances then obtaining it was impractical for the plaintiffs to first proceed to the administrative official concerned before taking court action.[33]

A different set of principles applies to the third cause of action, anchored as it is on alleged acts that are tortious in character or otherwise beyond the scope of Lichauco's official duties. The complaint alleges that Lichauco uttered several disparaging and defamatory remarks against petitioners and made false assertions against them in her letter to the Land Bank President.

The veracity of those allegations is of course presented at the trial to be determined on the basis of the evidence. However, if proven, they would establish liability on the part of Lichauco that is not shielded by the doctrine of state immunity from suit. The doctrine, as summarized in Shauf v. Court of Appeals :[34]

> While the doctrine appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties. The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded. It must be noted, however, that the rule is not so all-encompassing as to be applicable under all circumstances.
>
> It is a different matter where the public official is made to account in his capacity as such for acts contrary to law and injurious to the rights of plaintiff. As was clearly set forth by Justice Zaldivar in Director of the Bureau of Telecommunications, et al. vs. Aligaen, etc., et al. 'Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State within the rule of immunity of the State from suit. In the same tenor, it has been said that an action at law or suit in equity against a State officer or the director of a State department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights or the plaintiff, under an unconstitutional act or under an assumption of authority which he does

> not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent.' The rationale for this ruling is that the doctrine of state immunity cannot be used as an instrument for perpetrating an injustice.[35]

The doctrine poses no controversy if after trial on the merits, it is established that the public official concerned had committed illegal or tortious acts against the plaintiff. How does it apply in relation to a motion to dismiss on the ground of state immunity from suit, necessarily lodged before trial on the merits?

Our ruling in United States of America v. Reyes[36] warrants due consideration. The Court therein, through then Associate Justice (later Chief Justice) Hilario G. Davide, Jr., ruled that a motion to dismiss averring immunity from suit of a State and its functionaries was actually grounded on the specific ground for dismissal of the lack of cause of action, for even assuming that the defendants had committed the injurious acts complained of, "no action may be maintained thereon, because of the principle of state immunity."[37] Pertinently, the Court noted that "a motion to dismiss on the ground of failure to state a cause of action hypothetically admits the truth of the allegations in the complaint."

Thus, Lichauco, in alleging in her Motion to Dismiss that she is shielded by the State's immunity from suit, to hypothetically admitted the truth of the allegations in the complaint. Such hypothetical admission has to be deemed a concession on her part that she had performed the tortious or damaging acts against the petitioners, which if true, would hold her liable for damages.

Of course, Lichauco could very well raise the defense of state immunity from suit in regard to the third cause of action with the assertion that the acts complained of constituting said cause of action fell within her official functions and were not tortuous in character. Still, to establish such assertions of fact, a full-blown trial on the merits would be necessary, as would the case be if Lichauco raised the defense that she did not commit these acts complained of. Certainly, these defenses cannot be accorded merit before trial, factual as they are in character.

All told, contrary to the ruling of the Court of Appeals, we find no grave abuse of discretion on the part of the RTC in denying Lichauco's Motion to Dismiss.

WHEREFORE, the PETITION is GRANTED. The Decision of the Court of Appeals dated 21 February 2000 is SET ASIDE and the Order dated 14 August 1998 of the Regional Trial Court of Mandaluyong City is REINSTATED. The Regional Trial Court is ordered to try and decide the case on the merits with deliberate dispatch. No costs.

SO ORDERED.

Quisumbing, (Chairman), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

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[1] Penned by Associate Justice Eugenio Labotoria, concurred in by Associate Justices Jesus Elbinias and Marina Buzon.

[2] Particularly consisting of Capitol Wireless, Inc.; Clavecilla Electronics and Telecom Corporation; Digital Telecommunications Philippines; Domestic Satellite Phils.; Eastern Telecommunications Philippines, Inc.; Express Telecommunications Company; GMCR, Inc; International Communications Corporation; Isla Communications Company, Inc.; Liberty Broadcasting Network, Inc; Philippine Communications Satellite Corporation; Philippine Global Communications, Inc.; Philippine Long Distance Telephone Company; Pilipino Telephone Corporation; Radio Communications of the Philippines, Inc.; and Smart Communications, Inc. See rollo, pp. 57-59.

[3] Id. at 60.

[4] Id. at 61.

[5] Id. at 64.

[6]Id. at 65.

[7] The assignment of the other orbital slot, 161º East Longitude, was previously affirmed by the DOTC to PASI and formally effected through an Agreement on Transponder Agreement dated 16 June 1997. See rollo, p. 89.

[8]See id. at 50.

[9] Id. at 50-51.

[10] Rollo, pp. 49-50.

[11] Id. at 51-52.

[12] Id. at 53.

[13] Penned by Judge Edwin D. Sorongon.

[14] Rollo, p. 112.

[15]Id. at 113.

[16] Cited as 162 SCRA 88.

[17] Rollo, pp. 39-42.

[18] Id. at 214.

[19]See id. at 215.

[20] In her Comment, the Office of the Solicitor General, in behalf of Lichauco, states: "Respondent [Lichauco] attached the following to her petition filed before the Court of Appeals, to wit: (a) Original copies of the assailed orders as Annexes "A" and "B"; (b) [respondent]'s motion to dismiss as Annex "C"; (c) Copy of [respondent]'s motion for reconsideration as Annex "D"; and (d) [petitioner]'s opposition to the motion for reconsideration as Annex "E." See id. at 214.

[21] See Section 8, Rule 45, 1997 Rules of Civil Procedure.

[22] See Section 6, Rule 1, 1997 Rules of Civil Procedure.

[23] Rollo, p. 46.

[24] See e.g., Isberto v. Raquiza, G.R. No. L-35001, 25 September 1975, 67 SCRA 116, 119 (1975).

[25] See e.g., Section 3(m), Rule 131, Rules of Court.

[26] See Section 3, Rule 131, Rules of Court.

[27] See Section 3(a), Rule 131, Rules of Court.

[28] Article III, sec. 6, DOTC Department Circular No. 97-01 (17 October 1997).

[29] Article III, sec. 7, id.

[30]G.R. No. L-21064, 18 February 1970, 31 SCRA 413.

[31] Id. at 421-422.

[32]Id. at 422.

[33]Rollo, p. 113.

[34]G.R. No. 90314, 27 November 1990, 191 SCRA 713.

[35] Id. at 726-727. Citations omitted.

[36] Id. at 206.

[37] G.R. No. 79253, 1 March 1993, 219 SCRA 192.

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