CONSTANTINO T. GUMARU, PETITIONER, VS. QUIRINO STATE COLLEGE, RESPONDENT.

G.R. NO. 164196. June 22, 2007

Ponente: PUNO, C.J.

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PUNO, C.J.:

Assailed in this petition for review is the Decision[1] dated November 25, 2003 of the Court of Appeals in CA-G.R. SP No. 72603, which reversed and set aside the Order dated June 26, 2002 of the Regional Trial Court (RTC) of Quezon City, Branch 88, denying the motion to quash the writ of execution issued in Civil Case No. Q-97-32470, as well as its Resolution dated June 17, 2004, which denied petitioner's motion for reconsideration.

The facts are as follows:

On June 25, 1985, C.T. Gumaru Construction and Quirino State College, an educational institution organized and existing under Batas Pambansa (B.P.) Blg. 440,[2] through its president, Julian A. Alvarez, entered into an Agreement[3] for the construction of the state college's building in Diffun, Quirino Province. Construction was done in stages and was covered by supplemental agreements, because funding depended on the state college's annual budget allocation and fund releases from the government.

On October 17, 1997, Constantino T. Gumaru, owner and proprietor of C.T. Gumaru Construction, filed a complaint for damages[4] before the RTC of Quezon City against the state college and Julian A. Alvarez, asking for (1) P368,493.35, the expected profits which he would have realized from the construction of an unfinished portion of the project which was allegedly awarded by the defendants to another contractor in violation of his preferential right to finish the project; (2) P592,136.51, the escalation costs of construction materials and supplies; (3) P50,000.00, the value of plaintiff's bodega allegedly demolished by the defendants; and (4), P200,000.00 for moral and exemplary damages, attorney's fees and costs of litigation.[5]

On May 8, 1998, Atty. Carlos T. Aggabao, purportedly acting as counsel for the defendants, moved to dismiss the complaint on the ground of improper venue. The motion was denied. Defendants were directed to file an answer. When they failed to answer within the prescribed period, they were declared in default and plaintiff was allowed to present evidence ex parte.

On February 22, 2001, the trial court decided the case in favor of the plaintiff, viz:

> WHEREFORE, x x x judgment is rendered in favor of the plaintiff Gumaru and against the defendants College and Alvarez directing the latter to JOINTLY and SEVERALLY pay the former as follows:
>
> - The sum P368,493.35 for the First Cause of action;
>
> - The amount of P592,136.51 for the Second Cause of action;
>
> - The amount of P50,000.00 for the Third Cause of action;
>
> - P100,000.00 for moral damages and P100,000 for attorney's fees, plus costs.

> - The first three awards are with legal interests reckoned from the filing of this case until the amounts are paid in full.[6]

Defendants failed to appeal from the decision, a copy of which was duly served on Atty. Aggabao on March 6, 2001.[7] The decision became final and executory, and plaintiff moved for the issuance of a writ of execution. On December 5, 2001, a Writ of Execution[8] was issued, directing the Ex-Officio Provincial Sheriff of Quirino Province to seize the personal properties or, if insufficient, the real properties of the defendants to satisfy the judgment awards. The awards amounted to P1,739,725.30, inclusive of interests and sheriff's fees.

On January 11, 2002, the Office of the Solicitor General (OSG) entered its appearance for the first time as counsel for the defendants. At the same time, it filed a "Motion to Quash Writ of Execution" on the following grounds: (a) defendants were not duly represented in court, since the OSG was not notified of the proceedings; and (b) writs of execution may not be issued against government funds and properties to satisfy court judgments.

Meanwhile, a Sheriff's Notice of Levy and Auction Sale[9] was issued against two (2) parcels of land in the name of Quirino State College,[10] viz:

> WHEREAS, by virtue of a Writ of Execution issued by the Hon. Abednego O. Adre, Presiding Judge of the Regional Trial Court, x x x Branch 38, Quezon City x x x the undersigned provincial Sheriff of Quirino in order to satisfy the amount of ONE MILLION SEVEN HUNDRED THIRTY NINE THOUSAND SEVEN HUNDRED TWENTY FIVE AND 30/100 PESOS (P1,739,725.30) with interest thereon from the date of execution until fully paid aside from other incidental expenses incurred in connection with enforcement of this Writ of Execution is HEREBY LEVIED upon all rights, interest and participation of the defendant over the property described below, to wit:
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> LAND
>
> A parcel of land under ARP. No. 00411-15003 in the name of Quirino State College, Diffun, Quirino of which land is situated at Bonifacio, Diffun, Quirino, Philippines, containing an area of THIRTY THOUSAND (30,000) SQM. more or less.
>
> LAND
>
> A portion of land under ARP. No. 00415-16002 in the name of Quirino State College, Diffun, Quirino of which land situated at Bonifacio, Diffun, Quirino, Philippines, containing an area of 11.13110161 HA. more or less.

In an "Urgent Motion" dated March 13, 2002,[11] the OSG reiterated its plea for the quashal of the writ of execution and asked the court to take judicial notice of Supreme Court Administrative Circular No. 10-2000,[12] as well as Commission on Audit (COA) Resolution No. 2000-366[13] dated December 19, 2000, which finally adjudged plaintiff liable to the state college for P4,681,670.00 in overpayments, and liquidated damages for delay in the construction of the college building.

The trial court denied the motion to quash the writ of execution.[14] Without ruling on the issue of the defendants' alleged lack of legal representation, the court ruled that the properties of the state college may be seized under the writ of execution, since it is an incorporated agency of the government given specific powers to sue and be sued. A separate appropriation to satisfy the judgment awards was not considered necessary, because the state college's charter provides that funds for the construction and repair of its buildings, machinery, equipment, and facilities shall be taken from its annual appropriation.

The OSG filed a petition for certiorari before the Court of Appeals. On November 25, 2003, the Court of Appeals granted the petition.[15] In quashing the writ of execution, the Court of Appeals ruled that although the funds and

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properties of government agencies with personalities separate and distinct from the government are not exempt from execution or garnishment, the rule does not apply where the incorporated government agency concerned is performing a vital governmental function, like herein state college. In such cases, the money claim should be filed first with the COA as provided in Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines.

Gumaru's motion for reconsideration was denied. Hence, this petition raising the following issues:

> - Whether or not, upon the facts and circumstances obtaining herein, the consent given by the State to respondent to sue and be sued is plenary and not limited only to proceedings anterior to the stage of execution;
>
> - Whether or not the money claim subject of the case below is required to be filed first with the Commission on Audit (COA);
>
> - Whether or not the enforcement of the money judgment here involved is subject to rules and procedures under Sections 49-50 of Presidential Decree No. 1445;
>
> - Whether or not, being an incorporated agency of the Government, respondent's liability is controlled by the rulings on incorporated or chartered government agencies;
>
> - Whether or not further appropriation is required for the enforcement of the money judgment against respondent herein; and
>
> - Whether or not respondent's representation below by counsel of its own choice instead of by the OSG was proper.

Stated differently, the proper issues to be resolved are: (a) whether respondent state college was properly represented before the trial court; (b) if in the negative, whether the lack of proper legal representation was enough to nullify the proceedings; and (c) whether the properties of respondent state college may be seized under the writ of execution issued by the trial court.

On the issue of legal representation, Section 35, Chapter 12, Title III, Book IV of Executive Order No. 292, otherwise known as the Administrative Code of 1987, provides:

> The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. x x x x

Under the foregoing, the OSG is mandated to act as the law office of the government, its agencies, instrumentalities, officials and agents in any litigation or proceeding requiring the services of a lawyer.[16] With respect to government-owned or controlled corporations (GOCCs), the OSG shall act as counsel only when authorized by the President or by the head of the office concerned. The principal law office of GOCCs, as provided in Section 10, Chapter 3, Title III, Book IV, of the Administrative Code of 1987,[17] is the Office of the Government Corporate Counsel (OGCC).

In the case at bar, respondent state college is classified under the Code as a chartered institution,[18] viz:

> (12) Chartered institution refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges and the monetary authority of the State. (emphasis ours)

as opposed to a GOCC defined in the following segment,[19] viz:

> (13) A government-owned or controlled corporation refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.

Therefore, the proper statutory counsel of respondent state college is the OSG. Legal representation by Atty. Carlos T. Aggabao, a private lawyer, was clearly improper. In Gonzales v. Chavez,[20] we traced the statutory origins of the OSG and ruled that its mandate to act as the principal law office of the government is compulsory, viz:

> In x x x tracing the origins of the Office of the Solicitor General to gain a clear understanding of the nature of the functions and extent of [its] powers x x x, it is evident that a policy decision was made in the early beginnings to consolidate in one official the discharge of legal functions and services of the government. x x x
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> x x x x x x x x x
>
> x x x [T]he intent of the lawmaker was to give the designated official, the Solicitor General, x x x the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).
>
> Under the principles of statutory construction, so familiar even to law students, the term "shall" is nothing if not mandatory.[21] (emphases ours)

Thus, the Solicitor General cannot refuse to represent the government, its agencies, instrumentalities, officials and agents without a just and valid reason. He should not desist from appearing before the Court even in those cases where his opinions may be inconsistent with the government or any of its agents he is expected to represent.[22] As in the case of fiscals or prosecutors, bias or prejudice and animosity or hostility do not constitute legal and valid excuses for inhibition.[23] Unlike a practicing lawyer who has the right to decline employment, a fiscal or prosecutor, or the Solicitor General in the case at bar, cannot refuse to perform his functions without violating his oath of office.[24] Refusal to perform the duty is compellable by a writ of mandamus.[25] On the other hand, government agencies were admonished not to reject the services of the Solicitor General, or otherwise fail or refuse to forward the papers of a case to the OSG for appropriate action.[26] Actions filed in the name of the Republic that are not initiated by the OSG will be summarily dismissed.[27] Moreover, the fee of the lawyer who rendered legal service to the government in lieu of the OSG or the OGCC is the personal liability of the government official who hired his services without the prior written conformity of the OSG or the OGCC, as the case may be.[28] We explained the rationale for the compulsory nature of the OSG's mandate, in this wise:

> The rationale x x x is not difficult to comprehend. Sound government operations require consistency in legal policies and practices among the instrumentalities of the State. x x x [A]n official learned in the law and skilled in advocacy could best plan and coordinate the strategies and moves of the legal battles of the different arms of the government. Surely, the economy factor, too, must have weighed heavily in arriving at such a decision.
>
> x x x x x x x x x
>
> Sound management policies require that the government's approach to legal problems and policies formulated on legal issues be harmonized and coordinated by a specific agency. The government owes it to its officials and their respective offices, the political units at different levels, the public and the various sectors, local and international, that have dealings with it, to assure them of a degree of certitude and predictability in matters of

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> legal import.
>
> From the historical and statutory perspectives x x x it is beyond cavil that it is the Solicitor General who has been conferred the singular honor and privilege of being the "principal law officer and legal defender of the Government." One would be hard put to name a single legal group or law firm that can match the expertise, experience, resources, staff and prestige of the OSG which were painstakingly built up for almost a century.
>
> x x x [E]ndowed with a broad perspective that spans the legal interests of virtually the entire government officialdom, the OSG may be expected to transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal. Given such objectivity, it can discern, metaphorically speaking, the panoply that is the forest and not just the individual trees. Not merely will it strive for a legal victory circumscribed by the narrow interests of the client office or official, but as well, the vast concerns of the sovereign which it is committed to serve.[29]

The Solicitor General is thus expected to be the official who would best uphold and protect the legal interests of the government.[30] His non-representation of the government is dangerous and should not be allowed.

The magnitude of the non-representation by the OSG is nowhere more apparent than in the case at bar. Instead of having been represented by an "official learned in the law" who will "promote and protect the public weal" taking into consideration the "vast concerns of the sovereign which it is committed to serve," respondent state college was instead represented by a private lawyer who made no move to protect its interests except to file a motion to dismiss the complaint filed against the state college, which was eventually denied by the trial court. No answer to the complaint was filed notwithstanding due receipt of the order directing its filing, as a consequence of which the state college was declared in default. The order of default itself was not reconsidered, no move whatsoever having been made in that direction. The plaintiff was allowed to present its evidence ex-parte. When the decision was rendered adjudging the state college and its co-defendant, Julian A. Alvarez, liable to the plaintiff, no effort was made to appeal the decision notwithstanding due receipt of a copy thereof by Atty. Aggabao on March 6, 2001. Thus, a writ of execution was issued against the properties of the state college, which by this time remained as the sole defendant, Julian A. Alvarez having died during the pendency of the case and no proper substitution of parties having been made at the instance of Atty. Aggabao. Clear, therefore, was the utter failure of justice insofar as respondent state college is concerned. It was as if it was not represented by counsel at all. While it may be argued that the officials of respondent state college should have informed the OSG of the suit filed against the state college, and that it was their fault or negligence that the OSG was not informed in the first place, it is settled, however, that the principle of estoppel does not operate against the government for the act of its agents or their inaction.[31] The State has to protect its interests and cannot be bound by, or estopped by the mistakes or negligent acts of its officials or agents, much more, non-suited as a result thereof.[32] The legality of legal representation can be raised and questioned at any stage of the proceedings.[33]

The circumstances of this case, therefore, justify the nullification of the proceedings before the trial court, and the writ of execution issued as a consequence thereof. The state college should be given the opportunity to present its defenses with the benefit of its statutory counsel, the OSG. A new trial would best serve the interests of justice. With this disquisition, discussion of the other issues is not necessary.

IN VIEW WHEREOF, the petition is DENIED. This case is REMANDED to the trial court for trial anew, with the Office of the Solicitor General appearing as counsel for respondent Quirino State College. The Decision dated February 22, 2001 of the Regional Trial Court of Quezon City, Branch 88, in Civil Case No. Q-97-32470, and the assailed Decision dated November 25, 2003 and Resolution dated June 17, 2004 of the Court of Appeals in CA-G.R. SP No. 72603 are, for this reason, VACATED and SET ASIDE.

SO ORDERED.

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Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

[1] Rollo, pp. 27-39.

[2] Entitled "An Act Converting the Quirino National Agricultural School in the Municipality of Diffun, Province of Quirino, into a State College to be Known as the Quirino State College, and Appropriating Funds Therefor."

[3] Original Records, pp. 12-22.

[4] Id. at 2-39.

[5] Docketed as Civil Case No. Q-97-32470.

[6] Decision dated February 22, 2001; original records, pp. 168-169.

[7] See registry return receipt attached at the back of p. 169, id.

[8] Id. at 187-188.

[9] Id. at 221-222.

[10] By this time, only Quirino State College remained as the sole defendant, Julian A. Alvarez having died during the pendency of the case and no substitution of parties having been made; see Sheriff's Return dated January 30, 1992, id. at 210.

[11] Id. at 215-226.

[12] Re: Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units.

[13] CA rollo, pp. 47-50.

[14] Original Records, pp. 240-241.

[15] Supra note 1.

[16] However, the OSG shall not represent government officials or agents in cases where they are charged criminally or are sued civilly for damages arising from a felony. See Orbos v. Civil Service Commission, G.R. No. 92561, September 12, 1990, 189 SCRA 459 and Urbano v. Chavez, G.R. No. 87977, March 19, 1990, 183 SCRA 347.

[17] The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office. x x x x

[18] Sec. 2 (12), Introductory Provisions.

[19] Sec. 2 (13), Id.

[20] G.R. No. 97351, February 4, 1992, 205 SCRA 816.

[21] Id. at 836.

[22] Orbos v. Civil Service Commission, supra at 467.

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[23] See Enriquez, Sr. v. Hon. Gimenez, 107 Phil. 932 (1960).

[24] Id. at 937.

[25] Gonzales v. Chavez, supra at 836.

[26] Orbos v. Civil Service Commission, supra at 466-467. Also Gonzales v. Chavez, supra.

[27] Cooperative Development Authority v. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc., 432 Phil. 290 (2002) citing People v. Nano, G.R. No. 94639, January 13, 1992, 205 SCRA 155 and Republic of the Philippines v. Partisala, 203 Phil. 750 (1982). See also Civil Service Commission v. Asensi, G.R. No. 160657, December 17, 2004, 447 SCRA 356 and Phividec Industrial Authority v. Capitol Steel Corporation, G.R. No. 155692, October 23, 2003, 414 SCRA 327.

[28] See Polloso v. Gangan, 390 Phil. 1101 (2000).

[29] Gonzales v. Chavez, supra at 836, 846-847.

[30] See Orbos v. Civil Service Commission, supra at 466.

[31] National Housing Authority v. Grace Baptist Church, G.R. No. 156437, March 1, 2004, 424 SCRA 147; see also La Bugal-B'Laan Tribal Association, Inc. v. Ramos, G.R. No. 127882, December 1, 2004, 445 SCRA 1; Argana v. Republic, G.R. No. 147227, November 19, 2004, 443 SCRA 184; Philippine Ports Authority v. Sargasso Construction and Development Corporation, G.R. No. 146478, July 30, 2004, 435 SCRA 512.

[32] Republic v. Court of Appeals, G.R. No. 126316, June 25, 2004, 432 SCRA 593.

[33] See Municipality of Pililla, Rizal v. Court of Appeals, G.R. No. 105909, June 28, 1994, 233 SCRA 484.

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