

**THE DEPARTMENT OF HEALTH, SECRETARY MANUEL M. DAYRIT,
USEC. MA. MARGARITA GALON AND USEC. ANTONIO M. LOPEZ,
PETITIONERS, VS. PHIL. PHARMAWEALTH, INC., RESPONDENT.**

G.R. NO. 169304. March 13, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Assailed via petition for review are issuances of the Court of Appeals in CA-G.R. SP No. 84457, to wit: a) Decision[1] dated May 12, 2005 which affirmed the order issued by Judge Leoncio M. Janolo, Jr. of the Regional Trial Court of Pasig City, Branch 264 denying petitioners' motion to dismiss Civil Case No. 68208; and b) Resolution[2] dated August 9, 2005 which denied petitioners' motion for reconsideration.

Phil. Pharmawealth, Inc. (respondent) is a domestic corporation engaged in the business of manufacturing and supplying pharmaceutical products to government hospitals in the Philippines.

On December 22, 1998, then Secretary of Health Alberto G. Romualdez, Jr. issued Administrative Order (A.O.) No. 27,[3] Series of 1998, outlining the guidelines and procedures on the accreditation of government suppliers for pharmaceutical products.

A.O. No. 27 was later amended by A.O. No. 10,[4] Series of 2000, providing for additional guidelines for accreditation of drug suppliers aimed at ensuring that only qualified bidders can transact business with petitioner Department of Health (DOH). Part V of A.O. No. 10 reads, in part:

- Drug Manufacturer, Drug Trader and Drug Importer shall be allowed to apply for accreditation.
- Accreditation shall be done by the Central Office-Department of Health.
- A separate accreditation is required for the drug suppliers and for their specific products.

x x x x

12. Only products accredited by the Committee shall be allowed to be procured by the DOH and all other entities under its jurisdiction.[5] (Underscoring supplied)

On May 9, 2000[6] and May 29, 2000,[7] respondent submitted to petitioner DOH a request for the inclusion of additional items in its list of accredited drug products, including the antibiotic "Penicillin G Benzathine." Based on the schedule provided by petitioner DOH, it appears that processing of and release of the result of respondent's request were due on September 2000, the last month of the quarter following the date of its filing.[8]

Sometime in September 2000, petitioner DOH, through petitioner Antonio M. Lopez, chairperson of the pre-qualifications, bids and awards committee, issued an Invitation for Bids[9] for the procurement of 1.2 million units vials of Penicillin G Benzathine (Penicillin G Benzathine contract).

Despite the lack of response from petitioner DOH regarding respondent's request for inclusion of additional items

in its list of accredited products, respondent submitted its bid for the Penicillin G Benzathine contract. When the bids were opened on October 11, 2000, only two companies participated, with respondent submitting the lower bid at P82.24 per unit, compared to Cathay/YSS Laboratories' (YSS) bid of P95.00 per unit. In view, however, of the non-accreditation of respondent's Penicillin G Benzathine product, the contract was awarded to YSS.

Respondent thus filed a complaint[10] for injunction, mandamus and damages with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order with the Regional Trial Court of Pasig City praying, inter alia, that the trial court "nullify the award of the Penicillin G Benzathine contract (IFB No. 2000-10-11 [14]) to YSS Laboratories, Inc. and direct defendant DOH, defendant Romualdez, defendant Galon and defendant Lopez to declare plaintiff Pharmawealth as the lowest complying responsible bidder for the Benzathine contract, and that they accordingly award the same to plaintiff company" and "adjudge defendants Romualdez, Galon and Lopez liable, jointly and severally to plaintiff, for [the therein specified damages]."[11]

In their Comment,[12] petitioner DOH, Secretary Alberto Romualdez, Jr. who was later succeeded by petitioner Secretary Manuel M. Dayrit, and individual petitioners Undersecretaries Margarita Galon and Antonio Lopez argued for the dismissal of the complaint for lack of merit in view of the express reservation made by petitioner DOH to accept or reject any or all bids without incurring liability to the bidders, they positing that government agencies have such full discretion.

Petitioners subsequently filed a Manifestation and Motion[13] (motion to dismiss) praying for the outright dismissal of the complaint based on the doctrine of state immunity. Additionally, they alleged that respondent's representative was not duly authorized by its board of directors to file the complaint.

To petitioners' motion to dismiss, respondent filed its comment/opposition[14] contending, in the main, that the doctrine of state immunity is not applicable considering that individual petitioners are being sued both in their official and personal capacities, hence, they, not the state, would be liable for damages.

By Order of December 8, 2003, the trial court[15] denied petitioners' motion to dismiss.

Their motion for reconsideration having been denied,[16] petitioners filed a petition for certiorari[17] with the Court of Appeals, before which they maintained that the suit is against the state.

By the assailed Decision[18] of May 12, 2005, the Court of Appeals affirmed the trial court's Order. And by Resolution of August 9, 2005, it denied petitioners' motion for reconsideration.

Hence, the instant petition for review which raises the sole issue of whether the Court of Appeals erred in upholding the denial of petitioners' motion to dismiss.

The petition fails.

The suability of a government official depends on whether the official concerned was acting within his official or jurisdictional capacity, and whether the acts done in the performance of official functions will result in a charge or financial liability against the government. In the first case, the Constitution itself assures the availability of judicial review,[19] and it is the official concerned who should be impleaded as the proper party.[20]

In its complaint, respondent sufficiently imputes grave abuse of discretion against petitioners in their 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 that it is the official concerned who should be impleaded as defendant or respondent in an appropriate suit.[21]

Moreover, part of the reliefs prayed for by respondent is the enjoinder of the implementation, as well as the nullification of the award to YSS, the grant of which may not be enforced against individual petitioners and their

successors except in their official capacities as officials of the DOH.[22]

As regards petitioner DOH, the defense of immunity from suit will not avail despite its being an unincorporated agency of the government, for the only causes of action directed against it are preliminary injunction and mandamus. Under Section 1, Rule 58[23] of the Rules of Court, preliminary injunction may be directed against a party or a court, agency or a person. Moreover, the defense of state immunity from suit does not apply in causes of action which do not seek to impose a charge or financial liability against the State.[24]

As regards individual petitioners' suability for damages, the following discussion on the applicability of the defense of state immunity from suit is relevant.

The rule that a state may not be sued without its consent, now embodied in Section 3, Article XVI of the 1987 Constitution, is one of the generally accepted principles of international law, which we have now adopted as part of the law of the land.[25]

While the doctrine of state immunity 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.[26] The suit is regarded as one against the state where satisfaction of the judgment against the officials will require the state itself to perform a positive act, such as the appropriation of the amount necessary to pay the damages awarded against them.[27]

The rule, however, is not so all-encompassing as to be applicable under all circumstances. *Shauf v. Court of Appeals*[28] elucidates:

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.*,[29] "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 of 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. (Emphasis and underscoring supplied)

Hence, the rule does not apply where the public official is charged in his official capacity for acts that are unauthorized or unlawful and injurious to the rights of others. Neither does it apply where the public official is clearly being sued not in his official capacity but in his personal capacity, although the acts complained of may have been committed while he occupied a public position.[30]

In the present case, suing individual petitioners in their personal capacities for damages in connection with their alleged act of "illegal[ly] abus[ing] their official positions to make sure that plaintiff Pharmawealth would not be awarded the Benzathine contract [which act was] done in bad faith and with full knowledge of the limits and breadth of their powers given by law"[31] is permissible, in consonance with the foregoing principles. For an officer who exceeds the power conferred on him by law cannot hide behind the plea of sovereign immunity and must bear the liability personally.[32]

It bears stressing, however, that the statements in the immediately foregoing paragraph in no way reflect a ruling on the actual liability of petitioners to respondent. The mere allegation that a government official is being sued in

his personal capacity does not automatically remove the same from the protection of the doctrine of state immunity. Neither, upon the other hand, does the mere invocation of official character suffice to insulate such official from suability and liability for an act committed without or in excess of his or her authority.[33] These are matters of evidence which should be presented and proven at the trial.

WHEREFORE, the petition is DENIED. The assailed Decision dated May 12, 2005 and Resolution dated August 9, 2005 issued by the Court of Appeals are AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] CA rollo, pp. 186-197; penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Remedios A. Salazar-Fernando and Rosmari D. Carandang.

[2] Id. at 224-226.

[3] Id. at 37-38.

[4] Id. at 45-51.

[5] Id. at 46-47.

[6] Id. at 41-42.

[7] Id. at 43-44.

[8] Memorandum No. 125-A, s. 2000; RTC records, p. 33.

[9] CA rollo, pp. 57-67.

[10] RTC records, pp. 2-15.

[11] Id. at 13-14.

[12] Id. at 127-137.

[13] Id. at 182-187.

[14] Id. at 210-213.

[15] Id. at 229-234.

[16] Through Order dated March 15, 2004; Records, p. 255.

[17] CA rollo, pp. 1-15.

[18] Id. at 186-197.

[19] Section 1, Article VIII of the 1987 Constitution.

[20] See *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco*, G.R. No. 142362, May 3, 2006, 489 SCRA 22.

[21] *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco*, *supra*.

[22] See *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco*, *supra*.

[23] Section 1. Preliminary injunction defined; classes. - A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

[24] Philippine Agila Satellite, Inc. v. Trinidad-Lichauco, *supra*.

[25] *Shauf v. Court of Appeals*, G.R. No. 90314, November 27, 1990, 191 SCRA 713 cited in *United States of America v. Reyes*, G.R. No. 79253, March 1, 1993, 219 SCRA 192.

[26] *Ibid*.

[27] *Shauf v. Court of Appeals*, *supra*.

[28] *Id.* at 727.

[29] G.R. No. L-31135, May 29, 1970, 33 SCRA 368.

[30] *Lansang v. Court of Appeals*, 383 Phil. 141 (2000).

[31] RTC records, p. 11.

[32] *Festejo v. Fernando*, 94 Phil. 504 (1954), as cited in *Bernas, The Constitution of the Republic of the Philippines: A Commentary* 1275 (2003 ed.); See also *Sanders v. Veridiano II*, G.R. No. L-46930, June 10, 1988, 162 SCRA 88.

[33] *Sanders v. Veridiano II*, *supra*.

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