

**MUNICIPALITY OF SAN FERNANDO, LA UNION, PETITIONER, VS.
HON. JUDGE ROMEO N. FIRME, JUANA RIMANDO-BANIÑA,
LAUREANO BANIÑA, JR., SOR MARIETA BANIÑA, MONTANO BANIÑA,
ORJA BANIÑA AN...**

G.R. No. 52179. April 08, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari with prayer for the issuance of a writ of preliminary mandatory injunction seeking the nullification or modification of the proceedings and the orders issued by the respondent Judge Romeo N. Firme, in his capacity as the presiding judge of the Court of First Instance of La Union, Second Judicial District, Branch IV, Bauang, La Union in Civil Case No. 107-BG, entitled "Juana Rimando Baniña, et al. vs. Macario Nieveras, et al." dated November 4,1975; July 13,1976; August 23,1976; February 23,1977; March 16,1977; July 26,1979; September 7,1979; November 7,1979 and December 3,1979 and the decision dated October 10,1979 ordering defendants Municipality of San Fernando, La Union and Alfredo Bislig to pay, jointly and severally, the plaintiffs for funeral expenses, actual damages consisting of the loss of earning capacity of the deceased, attorney's fees and costs of suit and dismissing the complaint against the Estate of Macario Nieveras and Bernardo Balagot.

The antecedent facts are as follows:

Petitioner Municipality of San Fernando, La Union is a municipal corporation existing under and in accordance with the laws of the Republic of the Philippines. Respondent Honorable Judge Romeo N. Firme is impleaded in his official capacity as the presiding judge of the Court of First Instance of La Union, Branch IV, Bauang, La Union. While private respondents Juana Rimando-Baniña, Laureano Baniña Jr., Sor Marietta Baniña, Montano Baniña, Orja Baniña and Lydia R. Baniña are heirs of the deceased Laureano Baniña Sr. and plaintiffs in Civil Case No. 107-Bg before the aforesaid court.

At about 7 o'clock in the morning of December 16,1965, a collision occurred involving a passenger jeepney driven by Bernardo Balagot and owned by the Estate of Macario Nieveras, a gravel and sand truck driven by Jose Manandeg and owned by Tanquilino Velasquez and a dump truck of the Municipality of San Fernando, La Union and driven by Alfredo Bislig. Due to the impact, several passengers of the jeepney including Laureano Baniña Sr. died as a result of the injuries they sustained and four (4) others suffered varying degrees of physical injuries.

On December 11, 1966, the private respondents instituted a complaint for damages against the Estate of Macario Nieveras and Bernardo Balagot, owner and driver, respectively, of the passenger jeepney, which was docketed Civil Case No. 2183 in the Court of First Instance of La Union, Branch I, San Fernando, La Union. However, the aforesaid defendants filed a Third Party Complaint against the petitioner and the driver of a dump truck of petitioner.

Thereafter, the case was subsequently transferred to Branch IV, presided over by respondent judge and was subsequently docketed as Civil Case No. 107-Bg. By virtue of a court order dated May 7, 1975, the private respondents amended the complaint wherein the petitioner and its regular employee, Alfredo Bislig were impleaded for the first time as defendants. Petitioner filed its answer and raised affirmative defenses such as lack of cause of action, non-suability of the State, prescription of cause of action and the negligence of the owner and driver of the passenger jeepney as the proximate cause of the collision.

In the course of the proceedings, the respondent judge issued the following questioned orders, to wit:

(1)

Order dated November 4, 1975 dismissing the cross-claim against Bernardo Balagot;

(2)

Order dated July 13, 1976 admitting the Amended Answer of the Municipality of San Fernando, La Union and Bislig and setting the hearing on the affirmative defenses only with respect to the supposed lack of jurisdiction;

(3)

Order dated August 23, 1976 deferring the resolution of the grounds for the Motion to Dismiss until the trial;

(4)

Order dated February 23, 1977 denying the motion for reconsideration of the order of July 13, 1976 filed by the Municipality and Bislig for having been filed out of time;

(5)

Order dated March 16, 1977 reiterating the denial of the motion for reconsideration of the order of July 13, 1976;

(6)

Order dated July 26, 1979 declaring the case deemed submitted for decision it appearing that parties have not yet submitted their respective memoranda despite the court's direction; and

(7)

Order dated September 7, 1979 denying the petitioner's motion for reconsideration and/or order to recall prosecution witnesses for cross examination.

On October 10, 1979 the trial court rendered a decision, the dispositive portion is hereunder quoted as follows:

"IN VIEW OF ALL OF (sic) THE FOREGOING, judgment is hereby rendered for the plaintiffs, and defendants Municipality of San Fernando, La Union and Alfredo Bislig are ordered to pay jointly and severally, plaintiffs Juana Rimando-Baniña, Mrs. Priscilla B. Surell, Laureano Baniña Jr., Sor Marietta Baniña, Mrs. Fe B. Soriano, Montano Baniña, Orja Baniña and Lydia B. Baniña the sums of P1,500.00 as funeral expenses and P24,744.24 as the lost expected earnings of the late Laureano Baniña Sr., P30,000.00 as moral damages, and P2,500.00 as attorney's fees. Costs against said defendants.

"The Complaint is dismissed as to defendants Estate of Macario Nieveras and Bernardo Balagot.

"SO ORDERED." (Rollo, p. 30)

Petitioner filed a motion for reconsideration and for a new trial without prejudice to another motion which was then pending. However, respondent judge issued another order dated November 7, 1979 denying the motion for

reconsideration of the order of September 7, 1979 for having been filed out of time.

Finally, the respondent judge issued an order dated December 3, 1979 providing that if defendants municipality and Bislig further wish to pursue the matter disposed of in the order of July 26, 1979, such should be elevated to a higher court in accordance with the Rules of Court. Hence, this petition.

Petitioner maintains that the respondent judge committed grave abuse of discretion amounting to excess of jurisdiction in issuing the aforesaid orders and in rendering a decision. Furthermore, petitioner asserts that while appeal of the decision maybe available, the same is not the speedy and adequate remedy in the ordinary course of law.

On the other hand, private respondents controvert the position of the petitioner and allege that the petition is devoid of merit, utterly lacking the good faith which is indispensable in a petition for certiorari and prohibition. (Rollo, p. 42) In addition, the private respondents stress that petitioner has not considered that every court, including respondent court, has the inherent power to amend and control its process and orders so as to make them conformable to law and justice. (Rollo, p. 43)

The controversy boils down to the main issue of whether or not the respondent court committed grave abuse of discretion when it deferred and failed to resolve the defense of non-suability of the State amounting to lack of jurisdiction in a motion to dismiss.

In the case at bar, the respondent judge deferred the resolution of the defense of non-suability of the State amounting to lack of jurisdiction until trial. However, said respondent judge failed to resolve such defense, proceeded with the trial and thereafter rendered a decision against the municipality and its driver.

The respondent judge did not commit grave abuse of discretion when in the exercise of its judgment it arbitrarily failed to resolve the vital issue of non-suability of the State in the guise of the municipality. However, said judge acted in excess of his jurisdiction when in his decision dated October 10, 1979 he held the municipality liable for the quasi-delict committed by its regular employee.

The doctrine of non-suability of the State is expressly provided for in Article XVI, Section 3 of the Constitution, to wit: "the State may not be sued without its consent."

Stated in simple parlance, the general rule is that the State may not be sued except when it gives consent to be sued. Consent takes the form of express or implied consent.

Express consent may be embodied in a general law or a special law. The standing consent of the State to be sued in case of money claims involving liability arising from contracts is found in Act No. 3083. A special law may be passed to enable a person to sue the government for an alleged quasi-delict, as in *Merritt v. Government of the Philippine Islands* (34 Phil 311). (see *United States of America v. Guinto*, G.R. No. 76607, February 26, 1990, 182 SCRA 644, 654)

Consent is implied when the government enters into business contracts, thereby descending to the level of the other contracting party, and also when the State files a complaint, thus opening itself to a counterclaim. (Ibid)

Municipal corporations, for example, like provinces and cities, are agencies of the State when they are engaged in governmental functions and therefore should enjoy the sovereign immunity from suit. Nevertheless, they are subject to suit even in the performance of such functions because their charter provides that they can sue and be sued. (Cruz, *Philippine Political Law*, 1987 Edition, p. 39)

A distinction should first be made between suability and liability. "Suability depends on the consent of the state to be sued, liability on the applicable law and the established facts. The circumstance that a state is suable does not

necessarily mean that it is liable; on the other hand, it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state has allowed itself to be sued. When the state does waive its sovereign immunity, it is only giving the plaintiff the chance to prove, if it can, that the defendant is liable." (United States of America v. Guinto, supra, p. 659-660)

Anent the issue of whether or not the municipality is liable for the torts committed by its employee, the test of liability of the municipality depends on whether or not the driver, acting in behalf of the municipality, is performing governmental or proprietary functions. As emphasized in the case of Torio v. Fontanilla (G.R. No. L-29993, October 23, 1978, 85 SCRA 599, 606), the distinction of powers becomes important for purposes of determining the liability of the municipality for the acts of its agents which result in an injury to third persons.

Another statement of the test is given in City of Kokomo v. Loy, decided by the Supreme Court of Indiana in 1916, thus:

"Municipal corporations exist in a dual capacity, and their functions are twofold. In one they exercise the right springing from sovereignty, and while in the performance of the duties pertaining thereto, their acts are political and governmental. Their officers and agents in such capacity, though elected or appointed by them, are nevertheless public functionaries performing a public service, and as such they are officers, agents, and servants of the state. In the other capacity the municipalities exercise a private, proprietary or corporate right, arising from their existence as legal persons and not as public agencies. Their officers and agents in the performance of such functions act in behalf of the municipalities in their corporate or individual capacity, and not for the state or sovereign power." (112N.E., 994-995) (Ibid, pp. 605-606)

It has already been remarked that municipal corporations are suable because their charters grant them the competence to sue and be sued. Nevertheless, they are generally not liable for torts committed by them in the discharge of governmental functions and can be held answerable only if it can be shown that they were acting in a proprietary capacity. In permitting such entities to be sued, the State merely gives the claimant the right to show that the defendant was not acting in its governmental capacity when the injury was committed or that the case comes under the exceptions recognized by law. Failing this, the claimant cannot recover. (Cruz, supra, p.44)

In the case at bar, the driver of the dump truck of the municipality insists that "he was on his way to the Naguilian river to get a load of sand and gravel for the repair of San Fernando's municipal streets." (Rollo, p.29)

In the absence of any evidence to the contrary, the regularity of the performance of official duty is presumed pursuant to Section 3(m) of Rule 131 of the Revised Rules of Court. Hence, We rule that the driver of the dump truck was performing duties or tasks pertaining to his office.

We already stressed in the case of Palafox, et.al. v. Province of Ilocos Norte, the District Engineer, and the Provincial Treasurer (102 Phil 1186) that "the construction or maintenance of roads in which the truck and the driver worked at the time of the accident are admittedly governmental activities."

After a careful examination of existing laws and jurisprudence, We arrive at the conclusion that the municipality cannot be held liable for the torts committed by its regular employee, who was then engaged in the discharge of governmental functions. Hence, the death of the passenger — tragic and deplorable though it may be — imposed on the municipality no duty to pay monetary compensation.

All premises considered, the Court is convinced that the respondent judge's dereliction in failing to resolve the issue of non-suability did not amount to grave abuse of discretion. But said judge exceeded his jurisdiction when it ruled on the issue of liability.

ACCORDINGLY, the petition is GRANTED and the decision of the respondent court is hereby modified,

absolving the petitioner municipality of any liability in favor of private respondents.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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