

TRADERS ROYAL BANK, PETITIONER, VS. HON. INTERMEDIATE APPELLATE COURT AND HON. GREGORIO S. CENDANA, IN HIS CAPACITY AS DIRECTOR OF THE NATIONAL MEDIA PRODUCTION CENTER (NMPC), R...

G.R. No. 68514. December 17, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this petition for review on certiorari, the Traders Royal Bank (Traders) seeks to nullify the decision[1] of the then Intermediate Appellate Court ordering the dismissal of the collection case against the National Media Production Center (NMPC) and the Production Specialists, Inc. (PSI) insofar as the NMPC is concerned, and the release of the garnishment on the moneys of the NMPC as well as any attachment of its properties.

On April 9, 1981, Traders, a banking institution operating under Philippine laws, entered into a loan agreement with the NMPC, a government instrumentality tasked with the function of disseminating government information, programs and policies, represented by Director Gregorio S. Cendana, and the PSI, a corporation duly organized and existing under Philippine laws, represented by its president, Romeo G. Jalosjos.[2]

Under the loan agreement, Traders approved a credit accommodation in the amount of two million five hundred twenty thousand pesos (P2,520,000) in favor of NMPC and PSI through a domestic stand-by letter of credit to guarantee payment of the coverage or broadcast rights for the 1981 season of the Philippine Basketball Association (PBA). Among the conditions imposed were that NMPC and PSI would deposit with Traders all collections obtained from the sponsoring companies and that during the term of said letter of credit they would maintain in their current account with the bank a balance of at least P500,000 or 20% of the face value of the letter of credit.[3]

As of July 27, 1981, the PBA had actually drawn against said letter of credit the total amount of P340,000. Inasmuch as NMPC and PSI did not make any payments on their obligation, nor did they comply with the conditions aforecited, Traders filed in the Court of First Instance of Rizal at Pasay City a complaint against NMPC and PSI to collect the whole amount of P2,520,000 (Civil Case No. 9303-P). Alleging therein that the defendants were selling or disposing of substantial portions of their assets. Traders prayed for the issuance of a writ of preliminary attachment.[4] The lower court issued the writ prayed for[5] after Traders filed a bond of P2,520,000.

Pursuant to said writ, the deputy sheriff of Rizal collected an aggregate amount of P1,046,816.75 from the PSI whose president, Jalosjos, thereafter requested Traders through a letter that said amount be considered as partial payment of defendants' principal obligation, interest and attorney's fees. Traders acceded to the request and through a manifestation, prayed the court to issue an order in the tenor of Jalosjos' request.[6] Said prayer was granted by the lower court.[7]

A few months later, the NMPC, through the Office of the Solicitor General, filed a motion to dismiss the case on the ground of lack of jurisdiction as the NMPC, being an entity under the Office of the President performing governmental functions, cannot be sued without its consent.[8]

On September 21, 1982, the lower court denied the motion to dismiss on the strength of the ruling in *Harry Lyons, Inc. vs. The United States of America*[9] that the state may be sued without its consent if it entered into a contract with a private person. In its answer to the complaint, NMPC reiterated its contention that it was immune from suit and alleged that the claim should have been filed with the Commission on Audit pursuant to Article XII, D, Section 2(1) of the 1973 Constitution and Section 26 of Presidential Decree No. 1445 (Government Auditing Code of the Philippines). It filed a cross-claim against PSI alleging that it merely acted as a guarantor of PSI in the loan agreement considering that it had appointed PSI as production manager and exclusive marketing manager for the 1979, 1980 and 1981 PBA seasons.[10]

The bond was thereafter renewed and pre-trial of the case was set. In the meantime, the deputy sheriff garnished the collection from the sponsoring companies in the amount of P1,391,699.57 and another P420,189.27 from NMPC's account with Traders for a total of P1,811,888.84.[11]

Before the trial, NMPC, through private counsel, filed another motion to dismiss reiterating the stand of the Office of the Solicitor General on NMPC's immunity from suit.[12] Traders opposed the motion asserting that the lower court has jurisdiction over the subject or nature of the case and that the complaint states facts sufficient to constitute a cause of action.[13] The NMPC, through private counsel, filed a reply to the opposition.

On January 5, 1984, the lower court issued an order stating that "to maintain the authoritative dignity" of the court, the order of September 21, 1982 denying the motion to dismiss should be respected.[14]

Consequently, NMPC filed before the then Intermediate Appellate Court a petition for certiorari, prohibition and mandamus alleging that the lower court gravely abused its discretion in denying the motion to dismiss and in failing to dissolve the writ of attachment on the grounds that government property cannot be attached, removed, concealed or disposed of and that the attachment bond of Traders was not renewed. It asserted that if NMPC was at all liable, partial availment of the letter of credit in the amount of P340,000 was "already more than satisfied" and that "as regards the undrawn balance, NMPC already terminated the loan agreement and/or whatever security or guarantee NMPC had previously executed to (sic) said letter of credit." [15] It prayed that the order denying the motions to dismiss be annulled and that the lower court be commanded to desist from further proceeding with the case and to dismiss the same and make permanent the mandatory injunction releasing the garnished moneys of the government.

The appellate court granted the petition in its decision of July 17, 1984. It found that as an instrumentality of the government under the supervision of the Office of the President, NMPC, which had not been duly incorporated so as to assume a separate juridical personality of its own, may not be sued without its consent. It ruled that NMPC's act of entering into a contract did not mean that it voluntarily waived its immunity from suit "inasmuch as NMPC truly has no personality of its own." It also held that although "review on certiorari or an order denying a motion to dismiss is not ordinarily availing, a petition for certiorari would nonetheless be proper if the jurisdictional competence of the Court is raised because jurisdiction may be raised at any point in the proceedings." [16]

Traders moved for a reconsideration of said decision, but its motion was denied. Hence, the instant petition for review on certiorari with prayer for the issuance of a restraining order.

Traders contends herein that although NMPC is a government instrumentality and hence, it may not be sued without its consent, by entering into a loan agreement for the benefit of the PBA, it exercised a proprietary

function thereby abandoning its sovereign capacity and impliedly consented to be sued. It also asserts that NMPC's petition for certiorari, prohibition and mandamus in the appellate court was improper.

On the procedural issue, We hold that the NMPC properly filed the petition for certiorari, prohibition and mandamus in the Intermediate Appellate Court because it needed an adequate and expeditious relief from the garnishment of government funds.[17]

On the issue of suability of the NMPC, we rule for the petitioner.

The doctrine of state immunity from suits is constitutionally recognized[18] and is germane to the concept of sovereignty. As such, the doctrine may be waived by general or special law. Immunity from suit may also be waived by an implied consent to be sued as when, through its officers and agents, the state enters into a contract in furtherance of a legitimate aim and purpose. By doing so, the state descends to the level of the citizen and its consent to be sued is implied from the very act of entering into such contract.[19]

A problem usually arises when a government entity, though unincorporated and therefore not possessed of a distinct juridical personality, enters into a contract which, by its nature, is proprietary in character. Should this transpire, the test of the state's suability is this: "If said non-governmental function is undertaken as an incident to its governmental function, there is no waiver thereby of the sovereign immunity from suit extended to such government entity." [20] In other words, if the transaction, contract or operation undertaken by the government entity is a necessary incident of its prime governmental function, said entity is immune from suit.[21]

With these jurisprudential background in mind, we thoroughly examined the records of this case to determine whether by entering into the aforesaid contract with Traders, the NMPC, through its Director, waived immunity from suit. The matter is further complicated by the fact that the action was filed against the NMPC "represented by Gregorio Cendaña"[22] and not against the Republic of the Philippines and therefore the consent, or absence thereof, on the part of the NMPC's principal, the Republic of the Philippines, should also be considered.

According to the Solicitor General, the NMPC was created on July 1, 1953 as a joint venture of the Philippine Council for U.S. Aid (PHILCUSA) and the Foreign Operations Agency of the government. It was principally engaged "in the public dissemination of government information to assist in the hastening of the slow economic development of the country." [23]

From then on, the NMPC had been shuttled from one supervising authority to another. Thus, on June 14, 1958, pursuant to Reorganization Plan No. 9-A and Executive Order No. 290,[24] NMPC was put under the jurisdiction of the Department of General Services.[25] In 1969, it was placed directly under the Office of then President Marcos.[26] After the declaration of martial law, President Marcos issued a memorandum reiterating his desire to exercise control over the agency.[27] Pursuant thereto, on May 28, 1974 Presidential Decree No. 473 appropriating thirty-six million pesos for the purchase and installation of equipment for the use of NMPC was promulgated.[28] Finally, on December 24, 1986, President Aquino issued Executive Order No. 100[29] which, in effect, abolished the NMPC by creating the Philippine Information Agency to which all records, assets and equipment of the NMPC were transferred.

With these facts at hand, we determined whether or not entering into a loan agreement to facilitate the broadcast of a basketball season, either as a principal borrower or as a guarantor, was an incident of what the Solicitor General described as the NMPC's function of "public dissemination of government information to assist in the hastening of the slow economic development of the country." It should be noted that Presidential Decree No. 473 also describes the NMPC as "responsible for the production of various publications that disseminate information to the general public in the Philippines and abroad." [30]

We find, however, that the available allegations and evidence on the nature of its functions and the purpose of the contract it entered into are sufficient to warrant a ruling that the NMPC was engaged in an undertaking which was not incidental to disseminating governmental information.

The general and bare allegation of the NMPC on its non-suability is weak even in the face of its own admission that it was "in truth and in fact merely acting as guarantor" for PSI.[31] There is, however, no explanation as to what liabilities the NMPC had as such "guarantor." A reading of the loan agreement, in fact, reveals that there is no distinction as to the nature of the liability of the PSI and the NMPC. In the contract, both are referred to collectively as the "clients" and "accountees". Hence, it can safely be assumed that by the terms of the contract, the NMPC was engaged in a business undertaking which was certainly beyond its function of disseminating governmental information.[32]

While it is true that even statutory provisions expressly waiving state immunity from suit are construed in strictissimi juris,[33] and therefore, extreme caution should be exercised in determining the existence of an implied consent of the state, when the state itself, through the acts of a duly authorized official of an agency, exceeds its authority, the doctrine may not be invoked as a shield in the same manner that it cannot serve as an instrument for perpetrating an injustice.[34]

The NMPC's implied consent to be sued notwithstanding, the trial court did not have the power to garnish NMPC deposits to answer for any eventual judgment against it. Being public funds, the deposits are not within the reach of any garnishment or attachment proceedings. The reason for this doctrine was succinctly stated by then Justice Claudio Teehankee in *Commissioner of Public Highways vs. San Diego*: [35]

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

There is more reason to apply said doctrine in this case considering that the waiver of non-suability is only implied and not expressly allowed by statute.

Hence, the proceedings below should continue to determine the liabilities of PSI and NMPC. Should the court still find that NMPC is liable notwithstanding the PBA's availment of only P340,000 of the P2,520,000 value of the letter of credit and PSI's partial payment of the principal obligation, interest and attorney's fees in the amount of P1,046,816.75, then after judgment, the procedure outlined in Secs. 91-93 of Presidential Decree No. 1445 regarding claims against the government shall be observed.

WHEREFORE, the decision of the then Intermediate Appellate Court insofar as it considers the NMPC as immune from suit is hereby reversed and set aside. The writ of attachment issued by the lower court in Civil Case No. 9303-P against the NMPC deposits with Traders Royal Bank is immediately lifted and said court is directed to proceed with dispatch in resolving Civil Case No. 9303-P.

This decision is immediately executory. No costs.

SO ORDERED.

Gutierrez, Jr., and Bidin, JJ., concur.
Feliciano, J., on leave.

[1] Penned by Justice Jose A. R. Melo and concurred in by Justices Milagros A. German and Santiago M. Kapunan.

[2] Rollo, pp. 96-99.

[3] Rollo, pp. 34-37; 96-99.

[4] Rollo, pp. 29-33.

[5] Rollo, pp. 40-41.

[6] Rollo, pp. 42-43.

[7] Rollo, p. 45.

[8] Rollo, pp. 46-48.

[9] 104 Phil. 593.

[10] Rollo, pp. 55-61.

[11] Rollo, p. 67.

[12] Rollo, pp. 64-66.

[13] Rollo, pp. 68-72.

[14] Rollo, p. 131.

[15] Rollo, p. 87.

[16] Rollo, pp. 19-20

[17] Cadiao vs. Estenzo, L-42408, September 21, 1984, 132 SCRA 93, 102.

[18] Article XVI, Section 3, 1987 Constitution; Article XV, Section 16, 1977 Constitution.

[19] Santos vs. Santos, 92 Phil. 281, 284.

[20] Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service, L-23139, December 17, 1966, 18 SCRA 1121, 1124.

[21] Union Insurance Society of Canton, Ltd. vs. Republic, L-26409, July 31, 1972, 46 SCRA 120, 126.

[22] Rollo, p. 27

[23] Rollo, pp. 46-47.

[24] 54 O.G. 1734.

[25] Rollo, p. 50.

[26] Rollo, p. 51.

[27] Rollo, p. 52.

[28] 79 O.G. 2547.

[29] 83 O.G. 468.

[30] 79 O.G. 2547.

[31] Rollo, p. 61.

[32] See: United States of America, et al. vs. Hon. Rodolfo D. Rodrigo, etc. and Fabian Genove, G.R. No. 79470, February 26, 1990.

[33] Insurance Company of North America vs. Warner, Barnes & Co., Ltd., L-24106, October 31, 1967, 21 SCRA 765.

[34] See: Amigable vs. Cueva, L-26400, February 29, 1972, 43 SCRA 360 and Ministerio vs. CFI of Cebu, L-31635, August 31, 1971, 40 SCRA 464.

[35] L-30098, February 18, 1970, 31 SCRA 616, 625.

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