

REPUBLIC OF THE PHILIPPINES, GEN. RAMON MONTANO, GEN. ALFREDO LIM, GEN. ALEXANDER AGUIRRE, COL. EDGAR DULA TORRES, COL. CEZAR NAZARENO, MAJ. FILEMON GASMEN, PAT. NICANOR ABANDO,...

G.R. No. 84607. March 19, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

People may have already forgotten the tragedy that transpired on January 22, 1987. It is quite ironic that then, some journalists called it a Black Thursday, as a grim reminder to the nation of the misfortune that befell twelve (12) rallyists. But for most Filipinos now, the Mendiola massacre may now just as well be a chapter in our history books. For those however, who have become widows and orphans, certainly they would not settle for just that. They seek retribution for the lives taken that will never be brought back to life again.

Hence, the heirs of the deceased, together with those injured (Caylao group), instituted this petition, docketed as G.R. No. 84645, under Section 1 of Rule 65 of the Rules of Court, seeking the reversal and setting aside of the Orders of respondent Judge Sandoval,[1] dated May 31 and August 8, 1988, dismissing the complaint for damages of herein petitioners against the Republic of the Philippines in Civil Case No. 88-43351.

Petitioner, the Republic of the Philippines, through a similar remedy, docketed as G.R. No. 84607, seeks to set aside the Order of respondent Judge dated May 31, 1988, in Civil Case No. 88-43351 entitled "Erlinda Caylao, et al. vs. Republic of the Philippines, et al."

The pertinent portion of the questioned Order[2] dated May 31, 1988, reads as follows:

"With respect however to the other defendants, the impleaded Military Officers, since they are being charged in their personal and official capacity, and holding them liable, if at all, would not result in financial responsibility of the government, the principle of immunity from suit can not conveniently and correspondingly be applied to them.

WHEREFORE, the case as against the defendant Republic of the Philippines is hereby dismissed. As against the rest of the defendants the motion to dismiss is denied. They are given a period of ten (10) days from receipt of this order within which to file their respective pleadings."

On the other hand, the Order[3], dated August 8, 1988, denied the motions filed by both parties, for a reconsideration of the abovesited Order, respondent Judge finding no cogent reason to disturb the said order.

The massacre was the culmination of eight days and seven nights of encampment by members of the militant Kilusang Magbubukid sa Pilipinas (KMP) at the then Ministry (now Department) of Agrarian Reform (MAR) at the Philippine Tobacco Administration Building along Elliptical Road in Diliman, Quezon City.

The farmers and their sympathizers presented their demands for what they called "genuine agrarian reform". The

KMP, led by its national president, Jaime Tadeo, presented their problems and demands, among which were: (a) giving lands for free to farmers; (b) zero retention of lands by landlords; and (c) stop amortizations of land payments.

The dialogue between the farmers and the MAR officials began on January 15, 1987. The two days that followed saw a marked increase in people at the encampment. It was only on January 19, 1987 that Jaime Tadeo arrived to meet with then Minister Heherson Alvarez, only to be informed that the Minister can only meet with him the following day. On January 20, 1987, the meeting was held at the MAR conference room. Tadeo demanded that the minimum comprehensive land reform program be granted immediately. Minister Alvarez, for his part, can only promise to do his best to bring the matter to the attention of then President Aquino, during the cabinet meeting on January 21, 1987.

Tension mounted the following day. The farmers, now on their seventh day of encampment, barricaded the MAR premises and prevented the employees from going inside their offices. They hoisted the KMP flag together with the Philippine flag.

At around 6:30 p.m. of the same day, Minister Alvarez, in a meeting with Tadeo and his leaders, advised the latter to instead wait for the ratification of the 1987 Constitution and just allow the government to implement its comprehensive land reform program. Tadeo, however, countered by saying that he did not believe in the Constitution and that a genuine land reform cannot be realized under a landlord-controlled Congress. A heated discussion ensued between Tadeo and Minister Alvarez. This notwithstanding, Minister Alvarez suggested a negotiating panel from each side to meet again the following day.

On January 22, 1987, Tadeo's group instead decided to march to Malacañang to air their demands. Before the march started, Tadeo talked to the press and TV media. He uttered fiery words, the most telling of which were: "x x x inalis namin ang barikada bilang kahilingan ng ating Presidente, pero kinakailangan alisin din niya ang barikada sa Mendiola sapagkat bubutasin din namin iyon at dadanak ang dugo x x x." [4]

The farmers then proceeded to march to Malacañang, from Quezon Memorial Circle, at 10:00 a.m. They were later joined by members of other sectoral organizations such as the Kilusang Mayo Uno (KMU), Bagong Alyansang Makabayan (BAYAN), League of Filipino Students (LFS) and Kongreso ng Pagkakaisa ng Maralitang Lungsod (KPML).

At around 1:00 p.m., the marchers reached Liwasang Bonifacio where they held a brief program. It was at this point that some of the marchers entered the eastern side of the Post Office Building, and removed the steel bars surrounding the garden. Thereafter, they joined the march to Malacañang. At about 4:30 p.m., they reached C.M. Recto Avenue.

In anticipation of a civil disturbance, and acting upon reports received by the Capital Regional Command (CAPCOM) that the rallyists would proceed to Mendiola to break through the police lines and rush towards Malacañang, CAPCOM Commander General Ramon E. Montaña inspected the preparations and adequacy of the government forces to quell impending attacks.

OPLAN YELLOW (Revised) was put into effect. Task Force Nazareno under the command of Col. Cesar Nazareno was deployed at the vicinity of Malacañang. The civil disturbance control units of the Western Police District under Police Brigadier General Alfredo S. Lim were also activated.

Intelligence reports were also received that the KMP was heavily infiltrated by CPP/NPA elements and that an insurrection was impending. The threat seemed grave as there were also reports that San Beda College and Centro Escolar University would be forcibly occupied.

In its report, the Citizens' Mendiola Commission (a body specifically tasked to investigate the facts surrounding the incident, Commission for short) stated that the government anti-riot forces were assembled at Mendiola in a formation of three phalanges, in the following manner:

"(1) The first line was composed of policemen from police stations Nos. 3, 4, 6, 7, 8, 9 and 10 and the Chinatown detachment of the Western Police District. Police Colonel Edgar Dula Torres, Deputy Superintendent of the Western Police District, was designated as ground commander of the CDC first line of defense. The WPD CDC elements were positioned at the intersection of Mendiola and Legarda Streets after they were ordered to move forward from the top of Mendiola bridge. The WPD forces were in khaki uniform and carried the standard CDC equipment -- aluminum shields, truncheons and gas masks.

(2) At the second line of defense about ten (10) yards behind the WPD policemen were the elements of the Integrated National Police (INP) Field Force stationed at Fort Bonifacio from the 61st and 62nd INP Field Force; who carried also the standard CDC equipment -- truncheons, shields and gas masks. The INP Field Force was under the command of Police Major Demetrio dela Cruz.

(3) Forming the third line was the Marine Civil Disturbance Control Battalion composed of the first and second companies of the Philippine Marines stationed at Fort Bonifacio. The marines were all equipped with shields, truncheons and M-16 rifles (armalites) slung at their backs, under the command of Major Felimon B. Gasmin. The Marine CDC Battalion was positioned in line formation ten (10) yards farther behind the INP Field Force.

At the back of the marines were four (4) 6 x 6 army trucks, occupying the entire width of Mendiola street, followed immediately by two water cannons, one on each side of the street and eight fire trucks, four trucks on each side of the street. The eight fire trucks from Fire District I of Manila under Fire Superintendent Mario C. Tanchanco, were to supply water to the two water cannons.

Stationed farther behind the CDC forces were the two Mobile Dispersal Teams (MDT) each composed of two tear gas grenadiers, two spotters, an assistant grenadier, a driver and the team leader.

In front of the College of the Holy Spirit near Gate 4 of Malacañang stood the VOLVO Mobile Communications Van of the Commanding General of CAPCOM/INP, General Ramon E. Montaña. At this command post, after General Montaña had conferred with TF Nazareno Commander, Colonel Cezar Nazareno, about the adequacy and readiness of his forces, it was agreed that Police General Alfredo S. Lim would designate Police Colonel Edgar Dula Torres and Police Major Conrado Francisco as negotiators with the marchers. Police General Lim then proceeded to the WPD CDC elements already positioned at the foot of Mendiola bridge to relay to Police Colonel Torres and Police Major Francisco the instructions that the latter would negotiate with the marchers."^[5] (Underlining supplied)

The marchers, at around 4:30 p.m., numbered about 10,000 to 15,000. From C.M. Recto Avenue, they proceeded toward the police lines. No dialogue took place between the marchers and the anti-riot squad. It was at this moment that a clash occurred and, borrowing the words of the Commission "pandemonium broke loose". The Commission stated in its findings, to wit:

"x x x There was an explosion followed by throwing of pillboxes, stones and bottles. Steel bars, wooden clubs and lead pipes were used against the police. The police fought back with their shields and truncheons. The police line was breached. Suddenly shots were heard. The demonstrators disengaged from the government forces and retreated towards C.M. Recto Avenue. But sporadic firing continued from the government forces.

After the firing ceased, two MDTs headed by Lt. Romeo Paguinto and Lt. Laonglaan Goco sped towards Legarda Street and lobbed tear gas at the remaining rallyist still grouped in the vicinity of Mendiola. After dispersing the crowd, the two MDTs, together with the two WPD MDTs, proceeded to Liwasang Bonifacio upon order of General Montaña to disperse the rallyists assembled thereat. Assisting the MDTs were a number

of policemen from the WPD, attired in civilian clothes with white head bands, who were armed with long firearms."[6] (Underscoring ours)

After the clash, twelve (12) marchers were officially confirmed dead, although according to Tadeo, there were thirteen (13) dead, but he was not able to give the name and address of said victim. Thirty-nine (39) were wounded by gunshots and twelve (12) sustained minor injuries, all belonging to the group of the marchers.

Of the police and military personnel, three (3) sustained gunshot wounds and twenty (20) suffered minor physical injuries such as abrasions, contusions and the like.

In the aftermath of the confrontation, then President Corazon C. Aquino issued Administrative Order No. 11,[7] (A.O. 11, for brevity) dated January 22, 1987, which created the Citizens' Mendiola Commission. The body was composed of retired Supreme Court Justice Vicente Abad Santos as Chairman, retired Supreme Court Justice Jose Y. Feria and Mr. Antonio U. Miranda, both as members. A.O. 11 stated that the Commission was created precisely for the "purpose of conducting an investigation of the disorder, deaths, and casualties that took place in the vicinity of Mendiola Bridge and Mendiola Street and Claro M. Recto Avenue, Manila, in the afternoon of January 22, 1987". The Commission was expected to have submitted its findings not later than February 6, 1987. But it failed to do so. Consequently, the deadline was moved to February 16, 1987 by Administrative Order No. 13. Again, the Commission was unable to meet this deadline. Finally, on February 27, 1987, it submitted its report, in accordance with Administrative Order No. 17, issued on February 11, 1987.

In its report, the Commission recapitulated its findings, to wit:

"(1) The march to Mendiola of the KMP led by Jaime Tadeo, together with the other sectoral groups, was not covered by any permit as required under Batas Pambansa Blg. 880, the Public Assembly Act of 1985, in violation of paragraph (a) Section 13, punishable under paragraph (a), Section 14 of said law.

(2) The crowd dispersal control units of the police and the military were armed with .38 and .45 caliber handguns, and M-16 armalites, which is a prohibited act under paragraph 4(g), Section 13, and punishable under paragraph (b), Section 14 of Batas Pambansa Blg. 880.

(3) The security men assigned to protect the WPD, INP Field Force, the Marines and supporting military units, as well as the security officers of the police and military commanders were in civilian attire in violation of paragraph (a), Section 10, Batas Pambansa 880.

(4) There was unnecessary firing by the police and military crowd dispersal control units in dispersing the marchers, a prohibited act under paragraph (e), Section 13, and punishable under paragraph (b), Section 14, Batas Pambansa Blg. 880.

(5) The carrying and use of steel bars, pillboxes, darts, lead pipe, wooden clubs with spikes, and guns by the marchers as offensive weapons are prohibited acts punishable under paragraph (g), Section 13, and punishable under paragraph (e), Section 14 of Batas Pambansa Blg. 880.

(6) The KMP farmers broke off further negotiations with the MAR officials and were determined to march to Malacañang, emboldened as they are, by the inflammatory and incendiary utterances of their leader, Jaime Tadeo -- "bubutasin namin ang barikada .. Dadanak and dugo ... Ang nagugutom na magsasaka ay gagawa ng sariling butas ..."

(7) There was no dialogue between the rallyists and the government forces. Upon approaching the intersections of Legarda and Mendiola, the marchers began pushing the police lines and penetrated and broke through the first line of the CDC contingent.

(8) The police fought back with their truncheons and shields. They stood their ground but the CDC line was

breached. There ensued gunfire from both sides. It is not clear who started the firing.

(9) At the onset of the disturbance and violence, the water cannons and tear gas were not put into effective use to disperse the rioting crowd.

(10) The water cannons and fire trucks were not put into operation because (a) there was no order to use them; (b) they were incorrectly prepositioned; and (c) they were out of range of the marchers.

(11) Tear gas was not used at the start of the disturbance to disperse the rioters. After the crowd had dispersed and the wounded and dead were being carried away, the MDTs of the police and the military with their tear gas equipment and components conducted dispersal operations in the Mendiola area and proceeded to Liwasang Bonifacio to disperse the remnants of the marchers.

(12) No barbed wire barricade was used in Mendiola but no official reason was given for its absence."^[8]

From the results of the probe, the Commission recommended^[9] the criminal prosecution of four unidentified, uniformed individuals, shown either on tape or in pictures, firing at the direction of the marchers. In connection with this, it was the Commission's recommendation that the National Bureau of Investigation (NBI) be tasked to undertake investigations regarding the identities of those who actually fired their guns that resulted in the death of or injury to the victims of the incident. The Commission also suggested that all the commissioned officers of both the Western Police District and the INP Field Force, who were armed during the incident, be prosecuted for violation of paragraph 4(g) of Section 13, Batas Pambansa Blg. 880, the Public Assembly Act of 1985. The Commission's recommendation also included the prosecution of the marchers, for carrying deadly or offensive weapons, but whose identities have yet to be established. As for Jaime Tadeo, the Commission said that he should be prosecuted both for violation of paragraph (a), Section 13, Batas Pambansa Blg. 880 for holding the rally without a permit and for violation of Article 142, as amended, of the Revised Penal Code for inciting to sedition. As for the following officers, namely: (1) Gen. Ramon E. Montaña; (2) Police Gen. Alfredo S. Lim; (3) Police Gen. Edgar Dula Torres; (4) Police Maj. Demetrio dela Cruz; (5) Col. Cezar Nazareno; and (5) Maj. Felimon Gasmin, for their failure to make effective use of their skill and experience in directing the dispersal operations in Mendiola, administrative sanctions were recommended to be imposed.

The last and the most significant recommendation of the Commission was for the deceased and wounded victims of the Mendiola incident to be compensated by the government. It was this portion that petitioners (Caylao group) invoke in their claim for damages from the government.

Notwithstanding such recommendation, no concrete form of compensation was received by the victims. Thus, on July 27, 1987, herein petitioners, (Caylao group) filed a formal letter of demand for compensation from the Government.^[10] This formal demand was indorsed by the office of the Executive Secretary to the Department of Budget and Management (DBM) on August 13, 1987. The House Committee on Human Rights, on February 10, 1988, recommended the expeditious payment of compensation to the Mendiola victims.^[11]

After almost a year, on January 20, 1988, petitioners (Caylao group) were constrained to institute an action for damages against the Republic of the Philippines, together with the military officers, and personnel involved in the Mendiola incident, before the trial court. The complaint was docketed as Civil Case No. 88-43351.

On February 23, 1988, the Solicitor General filed a Motion to Dismiss on the ground that the State cannot be sued without its consent. Petitioners opposed said motion on March 16, 1988, maintaining that the State has waived its immunity from suit and that the dismissal of the instant action is contrary to both the Constitution and the International Law on Human Rights.

Respondent Judge Sandoval, in his first questioned Order, dismissed the complaint as against the Republic of the

Philippines on the ground that there was no waiver by the State. Petitioners (Caylao group) filed a Motion for Reconsideration therefrom, but the same was denied by respondent judge in his Order dated August 8, 1988. Consequently, Caylao and her co-petitioners filed the instant petition.

On the other hand, the Republic of the Philippines, together with the military officers and personnel impleaded as defendants in the court below, filed its petition for certiorari.

Having arisen from the same factual beginnings and raising practically identical issues, the two (2) petitions were consolidated and will therefore be jointly dealt with and resolved in this Decision.

The resolution of both petitions revolves around the main issue of whether or not the State has waived its immunity from suit.

Petitioners (Caylao group) advance the argument that the State has impliedly waived its sovereign immunity from suit. It is their considered view that by the recommendation made by the Commission for the government to indemnify the heirs and victims of the Mendiola incident and by the public addresses made by then President Aquino in the aftermath of the killings, the State has consented to be sued.

Under our Constitution the principle of immunity of the government from suit is expressly provided in Article XVI, Section 3. The principle is based on the very essence of sovereignty, and on the practical ground that there can be no legal right as against the authority that makes the law on which the right depends.[12] It also rests on reasons of public policy -- that public service would be hindered, and the public endangered, if the sovereign authority could be subjected to law suits at the instance of every citizen and consequently controlled in the uses and dispositions of the means required for the proper administration of the government.[13]

This is not a suit against the State with its consent.

Firstly, the recommendation made by the Commission regarding indemnification of the heirs of the deceased and the victims of the incident by the government does not in any way mean that liability automatically attaches to the State. It is important to note that A.O. 11 expressly states that the purpose of creating the Commission was to have a body that will conduct an "investigation of the disorder, deaths and casualties that took place." [14] In the exercise of its functions, A.O. 11 provides guidelines, and what is relevant to Our discussion reads:

"1. Its conclusions regarding the existence of probable cause for the commission of any offense and of the persons probably guilty of the same shall be sufficient compliance with the rules on preliminary investigation and the charges arising therefrom may be filed directly with the proper court." [15]

In effect, whatever may be the findings of the Commission, the same shall only serve as the cause of action in the event that any party decides to litigate his/her claim. Therefore, the Commission is merely a preliminary venue. The Commission is not the end in itself. Whatever recommendation it makes cannot in any way bind the State immediately, such recommendation not having become final and executory. This is precisely the essence of it being a fact-finding body.

Secondly, whatever acts or utterances that then President Aquino may have done or said, the same are not tantamount to the State having waived its immunity from suit. The President's act of joining the marchers, days after the incident, does not mean that there was an admission by the State of any liability. In fact to borrow the words of petitioners (Caylao group), "it was an act of solidarity by the government with the people". Moreover, petitioners rely on President Aquino's speech promising that the government would address the grievances of the rallyists. By this alone, it cannot be inferred that the State has admitted any liability, much less can it be inferred that it has consented to the suit.

Although consent to be sued may be given impliedly, still it cannot be maintained that such consent was given considering the circumstances obtaining in the instant case.

Thirdly, the case does not qualify as a suit against the State.

Some instances when a suit against the State is proper are:[16]

- (1) When the Republic is sued by name;
- (2) When the suit is against an unincorporated government agency;
- (3) When the suit is on its face against a government officer but the case is such that ultimate liability will belong not to the officer but to the government.

While the Republic in this case is sued by name, the ultimate liability does not pertain to the government. Although the military officers and personnel, then party defendants, were discharging their official functions when the incident occurred, their functions ceased to be official the moment they exceeded their authority. Based on the Commission findings, there was lack of justification by the government forces in the use of firearms.[17] Moreover, the members of the police and military crowd dispersal units committed a prohibited act under B.P. Blg. 880[18] as there was unnecessary firing by them in dispersing the marchers.[19]

As early as 1954, this Court has pronounced that an officer cannot shelter himself by the plea that he is a public agent acting under the color of his office when his acts are wholly without authority.[20] Until recently in 1991,[21] this doctrine still found application, this Court saying that immunity from suit cannot institutionalize irresponsibility and non-accountability nor grant a privileged status not claimed by any other official of the Republic. The military and police forces were deployed to ensure that the rally would be peaceful and orderly as well as to guarantee the safety of the very people that they are duty-bound to protect. However, the facts as found by the trial court showed that they fired at the unruly crowd to disperse the latter.

While it is true that nothing is better settled than the general rule that a sovereign state and its political subdivisions cannot be sued in the courts except when it has given its consent, it cannot be invoked by both the military officers to release them from any liability, and by the heirs and victims to demand indemnification from the government. The principle of state immunity from suit does not apply, as in this case, when the relief demanded by the suit requires no affirmative official action on the part of the State nor the affirmative discharge of any obligation which belongs to the State in its political capacity, even though the officers or agents who are made defendants claim to hold or act only by virtue of a title of the state and as its agents and servants.[22] This Court has made it quite clear that even a "high position in the government does not confer a license to persecute or recklessly injure another." [23]

The inescapable conclusion is that the State cannot be held civilly liable for the deaths that followed the incident. Instead, the liability should fall on the named defendants in the lower court. In line with the ruling of this court in *Shauf vs. Court of Appeals*, [24] herein public officials, having been found to have acted beyond the scope of their authority, may be held liable for damages.

WHEREFORE, finding no reversible error and no grave abuse of discretion committed by respondent Judge in issuing the questioned orders, the instant petitions are hereby DISMISSED.
SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.
Gutierrez, Jr., J., on terminal leave.

[1] Judge Edilberto G. Sandoval was the presiding judge of Branch 9 of Regional Trial Court, Manila.

[2] Rollo of G.R. No. 84607, p. 65.

[3] Ibid., pp. 73-76.

[4] Ibid., p. 80.

[5] Ibid., pp. 82-84.

[6] Ibid., pp. 84-85.

[7] Ibid., p. 158.

[8] Ibid., pp. 102-103.

[9] Ibid., pp. 107-109.

[10] Rollo, G.R. No. 84645, pp. 36-38.

[11] Ibid., pp. 125-126.

[12] *Kawananakoa vs. Polyblank*, 205 U.S. 349-353, 51 L. Ed. 834 (1907).

[13] *The Siren vs. United States*, 7 Wall. 152, 19 L. Ed. 129 (1869).

[14] *Supra*, note 7.

[15] *Ibid.*

[16] J. G. BERNAS, *CONSTITUTIONAL STRUCTURE AND POWERS OF GOVERNMENT, NOTES AND CASES* 414 (1st ed., 1991).

[17] Rollo of G.R. No. 84607, pp. 196-197.

[18] Section 13. Prohibited Acts. - The following shall constitute violations of this Act:

x x x x x x

(e) The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;

x x x x x x

[19] *Supra*, note 17 at p. 102.

[20] *Festejo vs. Fernando*, 94 Phil. 504 (1954) citing 43 Am. Jur. 86-90.

[21] *Chavez vs. Sandiganbayan*, 193 SCRA 282 (1991).

[22] *Ruiz vs. Cabahug*, 102 Phil. 110 (1957).

[23] *Supra*, note 19.

[24] 191 SCRA 713 (1990).

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