

**VETERANS MANPOWER AND PROTECTIVE SERVICES, INC.,
PETITIONER, VS. THE COURT OF APPEALS, THE CHIEF OF
PHILIPPINE CONSTABULARY AND PHILIPPINE CONSTABULARY
SUPERVISORY UNIT FOR SECU...**

G.R. No. 91359. September 25, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review on certiorari of the decision dated August 11, 1989, of the Court of Appeals in CA-G.R. SP No. 15990, entitled “The Chief of Philippine Constabulary (PC) and Philippine Constabulary Supervisory Unit for Security and Investigation Agencies (PC-SUSIA) vs. Hon. Omar U. Amin and Veterans Manpower and Protective Services, Inc. (VMPSI),” lifting the writ of preliminary injunction which the Regional Trial Court had issued to the PC and PC-SUSIA enjoining them from committing acts that would result in the cancellation or non-renewal of the license of VMPSI to operate as a security agency.

On March 28, 1988, VMPSI filed a complaint in the Regional Trial Court at Makati, Metro Manila, praying the court to:

“A. Forthwith issue a temporary restraining order to preserve the status quo, enjoining the defendants, or any one acting in their place or stead, to refrain from committing acts that would result in the cancellation or non-renewal of VMPSI’s license;

“B. In due time, issue a writ of preliminary injunction to the same effect;

“C. Render decision and judgment declaring null and void the amendment of Section 4 of R.A. No. 5487, by PD No. 11 exempting organizations like PADPAO from the prohibition that no person shall organize or have an interest in more than one agency; declaring PADPAO as an illegal organization existing in violation of said prohibition, without the illegal exemption provided in PD No. 11; declaring null and void Section 17 of R.A. No. 5487 which provides for the issuance of rules and regulations in consultation with PADPAO; declaring null and void the February 1, 1982 directive of Col. Sabas V. Edadas, in the name of the then PC Chief, requiring all private security agencies/security forces such as VMPSI to join PADPAO as a pre-requisite to secure/renew their licenses; declaring that VMPSI did not engage in ‘cut-throat competition’ in its contract with MWSS; ordering defendants PC Chief and PC-SUSIA to renew the license of VMPSI; ordering the defendants to refrain from further harassing VMPSI and from threatening VMPSI with cancellations or non-renewal of license, without legal and justifiable cause; ordering the defendants to pay to VMPSI the sum of P1,000,000.00 as actual and compensatory damages, P1,000,000.00 as exemplary damages, and P200,000.00 as attorney’s fees and expenses of litigation; and granting such further or other reliefs to VMPSI as may be deemed lawful, equitable and just.” (pp. 55-56, Rollo.)

The constitutionality of the following provisions of R.A. 5487 (otherwise known as the “Private Security Agency Law”), as amended, is questioned by VMPSI in its complaint:

“SEC. 4. Who may Organize a Security or Watchman Agency. - Any Filipino citizen or a corporation, partnership, or association, with a minimum capital of five thousand pesos, one hundred per cent of which is owned and controlled by Filipino citizens may organize a security or watchman agency: Provided, That no person shall organize or have an interest in, more than one such agency except those which are already existing at the promulgation of this Decree: x x x.” (As amended by P.D. Nos. 11 and 100.)

“SEC. 17. Rules and Regulations by Chief, Philippine Constabulary. - The Chief of the Philippine Constabulary, in consultation with the Philippine Association of Detective and Protective Agency Operators, Inc. and subject to the provision of existing laws, is hereby authorized to issue the rules and regulations necessary to carry out the purpose of this Act.”

VMPSI alleges that the above provisions of R.A. No. 5487 violate the provisions of the 1987 Constitution against monopolies, unfair competition and combinations in restraint of trade, and tend to favor and institutionalize the Philippine Association of Detective and Protective Agency Operators, Inc. (PADPAO) which is monopolistic because it has an interest in more than one security agency.

Respondent VMPSI likewise questions the validity of paragraph 3, subparagraph (g) of the Modifying Regulations on the Issuance of License to Operate and Private Security Licenses and Specifying Regulations for the Operation of PADPAO issued by then PC Chief Lt. Gen. Fidel V. Ramos, through Col. Sabas V. Edades, requiring that “all private security agencies/company security forces must register as members of any PADPAO Chapter organized within the Region where their main offices are located...” ((pp. 5-6, Complaint in Civil Case No. 88-471). As such membership requirement in PADPAO is compulsory in nature, it allegedly violates legal and constitutional provisions against monopolies, unfair competition and combinations in restraint of trade.

On May 12, 1986, a Memorandum of Agreement was executed by PADPAO and the PC Chief, which fixed the minimum monthly contract rate per guard for eight (8) hours of security service per day at P2,255.00 within Metro Manila and P2,215.00 outside of Metro Manila (Annex B, Petition).

On June 29, 1987, Odin Security Agency (Odin) filed a complaint with PADPAO accusing VMPSI of cut-throat competition by undercutting its contract rate for security services rendered to the Metropolitan Waterworks and Sewerage System (MWSS), charging said customer lower than the standard minimum rates provided in the Memorandum of Agreement dated May 12, 1986.

PADPAO found VMPSI guilty of cut-throat competition, hence, the PADPAO Committee on Discipline recommended the expulsion of VMPSI from PADPAO and the cancellation of its license to operate a security agency (Annex D, Petition).

The PC-SUSIA made similar findings and likewise recommended the cancellation of VMPSI’s license (Annex E, Petition).

As a result, PADPAO refused to issue a clearance/certificate of membership to VMPSI when it requested one.

VMPSI wrote the PC Chief on March 10, 1988, requesting him to set aside or disregard the findings of PADPAO and consider VMPSI’s application for renewal of its license, even without a certificate of membership from PADPAO (Annex F, Petition).

As the PC Chief did not reply, and VMPSI’s license was expiring on March 31, 1988, VMPSI filed Civil Case No. 88-471 in the RTC-Makati, Branch 135, on March 28, 1988 against the PC Chief and PC-SUSIA. On the same date, the court issued a restraining order enjoining the PC Chief and PC-SUSIA “from committing acts that would result in the cancellation or non-renewal of VMPSI’s license” (Annex G, Petition).

The PC chief and PC-SUSIA filed a “Motion to Dismiss, Opposition to the Issuance of Writ of Preliminary

Injunction, and Motion to Quash the Temporary Restraining Order,” on the grounds that the case is against the State which had not given consent thereto and that VMPSI’s license already expired on March 31, 1988, hence, the restraining order or preliminary injunction would not serve any purpose because there was no more license to be cancelled (Annex H, Petition). Respondent VMPSI opposed the motion.

On April 18, 1988, the lower court denied VMPSI’s application for a writ of preliminary injunction for being premature because it “has up to May 31, 1988 within which to file its application for renewal pursuant to Section 2 (e) of Presidential Decree No. 199, x x x.” (p. 140, Rollo.)

On May 23, 1988, VMPSI reiterated its application for the issuance of a writ of preliminary injunction because PC-SUSIA had rejected payment of the penalty for its failure to submit its application for renewal of its license and the requirements therefor within the prescribed period in Section 2(e) of the Revised Rules and Regulations Implementing R.A. 5487, as amended by P.D. 1919 (Annex M, Petition).

On June 10, 1988, the RTC-Makati issued a writ of preliminary injunction upon a bond of P100,000.00, restraining the defendants, or any one acting in their behalf, from cancelling or denying renewal of VMPSI’s license, until further orders from the court.

The PC Chief and PC-SUSIA filed a Motion for Reconsideration of the above order, but it was denied by the court in its Order of August 10, 1988 (Annex R, Petition).

On November 3, 1988, the PC Chief and PC-SUSIA sought relief by a petition for certiorari in the Court of Appeals.

On August 11, 1989, the Court of Appeals granted the petition. The dispositive portion of its decision reads:

“WHEREFORE, the petition for certiorari filed by petitioners PC Chief and PC-SUSIA is hereby GRANTED, and the RTC-Makati, Branch 135, is ordered to dismiss the complaint filed by respondent VMPSI in Civil Case No. 88-471, insofar as petitioners PC Chief and PC-SUSIA are concerned, for lack of jurisdiction. The writ of preliminary injunction issued on June 10, 1988, is dissolved.” (pp. 295-296, Rollo.)

VMPSI came to us with this petition for review.

The primary issue in this case is whether or not VMPSI’s complaint against the PC Chief and PC-SUSIA is a suit against the State without its consent.

The answer is yes.

The State may not be sued without its consent (Article XVI, Section 3, of the 1987 Constitution). Invoking this rule, the PC Chief and PC-SUSIA contend that, being instrumentalities of the national government exercising a primarily governmental function of regulating the organization and operation of private detective, watchmen, or security guard agencies, said official (the PC Chief) and agency (PC-SUSIA) may not be sued without the Government’s consent, especially in this case because VMPSI’s complaint seeks not only to compel the public respondents to act in a certain way, but worse, because VMPSI seeks actual and compensatory damages in the sum of P1,000,000.00, exemplary damages in the same amount, and P200,000.00 as attorney’s fees from said public respondents. Even if its action prospers, the payment of its monetary claims may not be enforced because the State did not consent to appropriate the necessary funds for that purpose.

Thus did we hold in *Shauf vs. Court of Appeals*, 191 SCRA 713:

“While the doctrine 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. The rule is that if the judgment against such officials will require the state itself to perform an

affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded.” (Emphasis supplied.)

A public official may sometimes be held liable in his personal or private capacity if he acts in bad faith, or beyond the scope of his authority or jurisdiction (*Shauf vs. Court of Appeals*, *supra*), however, since the acts for which the PC Chief and PC--SUSIA are being called to account in this case, were performed by them as part of their official duties, without malice, gross negligence, or bad faith, no recovery may be had against them in their private capacities.

We agree with the observation of the Court of Appeals that the Memorandum of Agreement dated May 12, 1986 does not constitute an implied consent by the State to be sued:

“The Memorandum of Agreement dated May 12, 1986 was entered into by the PC Chief in relation to the exercise of a function sovereign in nature. The correct test for the application of state immunity is not the conclusion of a contract by the State but the legal nature of the act. This was clearly enunciated in the case of *United States of America vs. Ruiz* where the Hon. Supreme Court held:

“‘The restrictive application of State immunity is proper only when the proceedings arise out of commercial transactions of the foreign sovereign, its commercial activities or economic affairs. Stated differently, a State may be said to have descended to the level of an individual and can thus be deemed to have tacitly given its consent to be sued only when it enters into a business contract. It does not apply where the contract relates to the exercise of its sovereign functions.’ (136 SCRA 487, 492.)

“In the instant case, the Memorandum of Agreement entered into by the PC Chief and PADPAO was intended to professionalize the industry and to standardize the salaries of security guards as well as the current rates of security services, clearly, a governmental function. The execution of the said agreement is incidental to the purpose of R.A. 5487, as amended, which is to regulate the organization and operation of private detective, watchmen or security guard agencies. (Underscoring Ours.)” (pp. 258-259, Rollo.)

Waiver of the State’s immunity from suit, being a derogation of sovereignty, will not be lightly inferred, but must be construed strictissimi juris (*Republic vs. Feliciano*, 148 SCRA 424). The consent of the State to be sued must emanate from statutory authority, hence, from a legislative act, not from a mere memorandum. Without such consent, the trial court did not acquire jurisdiction over the public respondents.

The state immunity doctrine rests upon reasons of public policy and the inconvenience and danger which would flow from a different rule. “It is obvious that public service would be hindered, and public safety endangered, if the supreme authority could be subjected to suits at the instance of every citizen, and, consequently, controlled in the use and disposition of the means required for the proper administration of the government” (*Siren vs. U.S. Wall*, 152, 19 L. ed. 129, as cited in 78 SCRA 477). In the same vein, this Court in *Republic vs. Purisima* (78 SCRA 470, 473) rationalized:

“Nonetheless, a continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused [by] private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined.” (citing *Providence Washington Insurance Co. vs. Republic*, 29 SCRA 598.)

WHEREFORE, the petition for review is DENIED and the judgment appealed from is AFFIRMED in toto. No

costs.

SO ORDERED.

Medialdea and Bellosillo, JJ., concur.

Cruz, J., (Chairman), on leave.

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