

SPOUSES JOSE FONTANILLA AND VIRGINIA FONTANILLA, PETITIONERS, VS. HONORABLE INOCENCIO D. MALIAMAN AND NATIONAL IRRIGATION ADMINISTRATION, RESPONDENTS.

G.R. Nos. 55963 & 61045. February 27, 1991

Ponente: PARAS, J.

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PARAS, J.:

In its Motion for Reconsideration[1] of the Court's Second Division decision in G.R. No. 55963 and G.R. No. 61045, the National Irrigation Administration (NIA, for brevity), through the Solicitor General, maintains that, on the strength of Presidential Decree No. 552 (which amended certain provisions of Republic Act 3601, the law creating the NIA) and the case of Angat River Irrigation System, et al. vs. Angat River Workers' Union, et al., 102 Phil. 790 "the NIA does not perform solely and primarily proprietary functions but is an agency of the government tasked with governmental functions, and is therefore not liable for the tortious act of its driver Hugo Garcia, who was not its special agent."

Although the majority opinion in the cited case of Angat System declares that the Angat System (like the NIA) exercised a governmental function because the nature of the powers and functions of said agency does not show that it was intended to "bring to the Government any special corporate benefit or pecuniary profit," there is a strong dissenting opinion penned by then Associate Justice and later Chief Justice Roberto Concepcion and concurred in by then Associate Justice J.B.L. Reyes which held the contrary view that the Angat River System is a government entity exercising proprietary functions. To buttress said stand, the former Chief Justice cited some authorities which will be useful in the proper resolution of this case.

Quoting from said dissenting opinion which cited McQuillin's The Law of Municipal Corporations, 3rd ed., Vol. 18, pp. 423-424:

"In undertaking to supply water at price, municipality is not performing governmental function but is engaged in trade, and is liable first as private company would be for any negligence in laying out of its pipes, in keeping them in repair, or in furnishing potable water through them. *Harvard Furniture Co., Inc. vs. City of Cambridge*, 320 Mass. 227, 68 N.E. (2d) 684.

"Municipality in contracting to provide water supply acts under its proprietary power and not under its legislative, public or governmental powers. *Farmers' State Bank vs. Conrad*, 100 Mont. 415, 47 P. (2d) 853."

In this connection, the opinion is that irrigation districts in the United States are basically identical to our irrigation systems under Act No. 2152. Because of such similarity, it is found appropriate to consider certain doctrines from American jurisprudence, which are as follows, to wit:

"An irrigation district is a public quasi corporation, organized, however, to conduct a business for the private benefit of the owners of land within its limits. They are members of the corporation, control its affairs, and alone are benefited by its operations. It is, in the administration of its business, the owner of its system in a proprietary rather than a public capacity, and must assume and bear the burdens of proprietary ownership."

(Nampa vs. Nampa & M. Irrig. Dist. 19 Idaho, 779, 115 Pac. 979)

“xxx the plaintiffs ought damages for injuries to crops on his land during 1923, 1924, 1925, and 1926, caused by water seeping, percolating and escaping from the defendant’s canal. The defendant contended that irrigation districts were agencies of the state, and were, therefore, not liable for the negligent construction or operation of their canals or ditches. The court, after a careful review of the authorities defining an irrigation district, conceded that such a quasi public corporation possessed some governmental powers and exercised some governmental functions, but held that the construction and operation of its irrigation canals and ditches was a proprietary rather than a governmental function, and hence the district was responsible in damages for the negligent construction or operation of its canal system.” (69 A.L.R., p. 1233)

It may not be amiss to state at this point that the functions of government have been classified into governmental or constituent and proprietary or ministrant. The former involves the exercise of sovereignty and considered as compulsory; the latter connotes merely the exercise of proprietary functions and thus considered as optional. The Solicitor General argues that the reasons presented by P.D. 552 for the existence of the NIA (the WHEREAS clauses of said decree) indubitably reveal that the responsibility vested in said agency concerns public welfare and public benefit, and is therefore an exercise of sovereignty. On the contrary, We agree with the former Chief Justice Concepcion in saying that the same purpose such as public benefit and public welfare may be found in the operation of certain enterprises (those engaged in the supply of electric power, or in supplying telegraphic, telephonic, and radio communication, or in the production and distribution of prime necessities, etc.) yet it is certain that the functions performed by such enterprises are basically proprietary in nature. Thus, as held in *Holderbaum vs. Hidalgo County Water Improvement District* (297 S.W. 865, aff’d in 11 S.W. [2d] 506) - cited in the dissenting opinion by Justice Concepcion:

“x x x Primarily, a water improvement district is in no better position than a city is when exercising its purely local powers and duties. Its general purposes are not essentially public in their nature, but are only incidentally so; those purposes may be likened to those of a city which is operating a waterworks system, or an irrigation system. * * * A water improvement district can do nothing, it has and furnishes no facilities, for the administration of the sovereign government. Its officers have no power or authority to exercise any of the functions of the general government, or to enforce any of the laws of the state or any of its other subdivisions, or collect taxes other than those assessed by the district. They have no more power or authority than that of the officers of a private corporation organized for like purposes. As a practical matter, the primary objects and purposes of such district are of a purely local nature, for the district is created and operated for the sole benefit of its own members, and an analysis of those objects and purposes discloses that they directly benefit only the landowners who reside within and whose lands form a part of the district, to the exclusion of all other residents therein. It is true, of course, that the state and the general public are greatly benefited by the proper operation of the district, and to that extent its objects and accomplishments are public in their nature, but this characteristic is only incidental to the primary and chief object of the corporation, which is the irrigation of lands forming a part of the district. It is obvious, then, that the purposes and duties of such districts do not come within the definition of public rights, purposes and duties which would entitle the district to the exemption raised by the common law as a protection to corporations having a purely public purpose and performing essentially public duties.”

Of equal importance is the case of *National Waterworks and Sewerage Authority (NAWASA) vs. NWSA Consolidated Unions*, 11 SCRA 766, which propounds the thesis that “the NAWASA is not an agency performing governmental functions; rather it performs proprietary functions xxx.” The functions of providing water supply and sewerage service are regarded as mere optional functions of government even though the service rendered caters to the community as a whole and the goal is for the general interest of society. The business of furnishing water supply and sewerage service, as held in the case of *Metropolitan Water District vs. Court of Industrial Relations, et al.*, 91 Phil. 840, “may for all practical purposes be likened to an industry engaged in by coal

companies, gas companies, power plants, ice plants, and the like.” Withal, it has been enunciated that “although the State may regulate the service and rates of water plants owned and operated by municipalities, such property is not employed for governmental purposes and in the ownership and operation thereof the municipality acts in its proprietary capacity, free from legislative interference.” (1 McQuillin, p. 683).

Like the NAWASA, the National Irrigation Administration was not created for purposes of local government. While it may be true that the NIA was essentially a service agency of the government aimed at promoting public interest and public welfare, such fact does not make the NIA essentially and purely a “government-function” corporation. NIA was created for the purpose of “constructing, improving, rehabilitating, and administering all national irrigation systems in the Philippines, including all communal and pump irrigation projects.” Certainly, the state and the community as a whole are largely benefited by the services the agency renders, but these functions are only incidental to the principal aim of the agency, which is the irrigation of lands.

We must not lose sight of the fact that the NIA is a government agency invested with a corporate personality separate and distinct from the government, thus is governed by the Corporation Law. Section 1 of Republic Act No. 3601 provides:

“Section 1. Name and Domicile - A body corporate is hereby created which shall be known as the National Irrigation Administration. xxx which shall be organized immediately after the approval of this Act. It shall have its principal seat of business in the City of Manila and shall have representatives in all provinces, for the proper conduct of its business.” (Underlining for emphasis)

Besides, Section 2, subsection b of P.D. 552 provides that:

“(b) To charge and collect from the beneficiaries of the water from all irrigation systems constructed by or under its administration, such fees or administration charges as may be necessary to cover the cost of operation, maintenance and insurance, and to recover the cost of construction within a reasonable period of time to the extent consistent with government policy; to recover funds or portions thereof expended for the construction and/or rehabilitation of communal irrigation systems which funds shall accrue to a special fund for irrigation development under section 2 hereof;

Unpaid irrigation fees or administration charges shall be preferred liens first, upon the land benefited, and then on the crops raised thereon, which liens shall have preference over all other liens except for taxes on the land, and such preferred liens shall not be removed until all fees or administration charges are paid or the property is levied upon and sold by the National Irrigation Administration for the satisfaction thereof. x x x”

The same section also provides that NIA may sue and be sued in court. Thus,

“(b)

xxx Judicial actions for the collection of unpaid irrigation fees or charges, drainage fees or other charges which the National Irrigation Administration is authorized to impose and collect, shall henceforth be governed by the provisions of the Rules of Court of the Philippines for similar actions, the provisions of other laws to the contrary notwithstanding.”

x x x

“(e)

x x x

x x x

x x x

All actions for the recovery of compensation and damages against the National Irrigation Administration under paragraphs (1), (2), and (3) hereof, shall be filed with a competent court within five (5) years from the date of entry of the land or destruction of the improvements or crops, after which period, the right of possession and/or ownership of the National Irrigation Administration shall be considered vested and absolute. All other actions for the recovery of compensation and damages to private property and improvements occasioned by the construction, operation and maintenance of irrigation facilities and ether hydraulic structures under the administration of the National Irrigation Administration, which have accrued ten (10) or more years prior to the approval of this decree are deemed to have prescribed and are barred forever.”

It has its own assets and liabilities. It also has corporate powers to be exercised by a Board of Directors. To quote Section 2, subsection (f):

“(f) x x x and to transact such business, as are directly or indirectly necessary, incidental or conducive to the attainment of the above powers and objectives, including the power to establish and maintain subsidiaries, and in general, to exercise all the powers of a corporation under the Corporation Law, insofar as they are not inconsistent with the provisions of this Act.” (Underlining supplied).

On the basis of the foregoing considerations, We conclude that the National Irrigation Administration is a government agency with a juridical personality separate and distinct from the government. It is not a mere agency of the government but a corporate body performing proprietary functions. Therefore, it may be held liable for the damages caused by the negligent act of its driver who was now its special agent.

ACCORDINGLY, the Motion for Reconsideration dated January 26, 1990 is DENIED WITH FINALITY. The decision of this Court in G.R. NO. 55963 and G.R. No. 61045 dated December 1, 1989 is hereby AFFIRMED.

Gancayco, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., (in the result), Narvasa, Melencio-Herrera, (in the result), and Cruz, JJ., join J. Feliciano in his concurring opinion.

Gutierrez, Jr., J., in the result.

Padilla, J., separate opinion.

[1] This motion was referred to the court en banc per resolution dated May 9, 1990.

CONCURRING OPINION

FELICIANO, J.:

I agree with the result reached by my distinguished brother in the Court, Mr. Justice Edgardo L. Paras, both in the Decision of the Court's Second Division dated 1 December 1989 (179 SCRA 685 [1989]) and in the present Resolution on the motion for reconsideration, which has been referred to the Court En Banc.

I agree, in other words, that the National Irrigation Administration (NIA) is liable for the acts of its employee Hugo Garcia which resulted in injury to the spouses Jose Fontanilla and Virginia Fontanilla. However, I reach this result through a slightly different route which is traced below.

In the original decision of the Court's Second Division, it is stated that:

"Certain functions and activities, which can be performed only by the Government, are more or less generally agreed to be 'governmental' in character, and so the State is immune from tort liability. On the other hand, a service which might as well be provided by a private corporation, and particularly when it collects revenues from it, the function is considered a 'proprietary' one, as to which there may be liability for the torts of agents within the scope of their employment."

The original Decision and the Resolution on the motion for reconsideration hold that the NIA is "an agency of the government exercising proprietary functions."

I would respectfully submit that the liability of an agency or instrumentality of the Government for torts of its employees under Article 2180, 6th paragraph, of the Civil Code is not contingent upon the technical characterization of the functions or activities carried out by that agency or instrumentality as "governmental", on the one hand, or "proprietary," upon the other.

In the first place, it is merely commonplace to note that governments in our day and age do not restrict themselves to the original basic and primitive functions of repelling invasion by a foreign enemy, maintaining peace and order in society and protecting the physical integrity or the food supplies of its citizens or inhabitants, but instead assume and carry out all kinds of activities which they may determine to redound to the general interest and benefit of the population. Thus, the classical laissez-faire concept of a state, which prevailed during the 19th century, has today been replaced by the concept of the welfare state. Moreover, activities which in other states more economically advanced than our own have been undertaken by private enterprise, are here still being carried out by the Government or, more generally, the public sector in view of the inadequacy of private capital and private entrepreneurial spirit.

Secondly, under Section 2(1) of Article IX of the Constitution, whether or not a government owned or controlled corporation or entity forms part of the Government and is embraced within the civil service depends, not upon the "governmental," as distinguished from "proprietary," nature of the activities performed by such entity corporation, but rather upon whether or not the corporation or entity is possessed of an "original charter." Thus, it appears to me that the framers of the 1987 Constitution had given up the notion of trying to distinguish between "governmental" and "proprietary" functions for purposes of determining whether employees of a particular agency or instrumentality should be governed by the Civil Service Law and Regulations or, alternatively, by the Labor Code and its Implementing Regulations administered by the National Labor Relations Commission and the Department of Labor and Employment.

Article 2180 of the Civil Code provides in part as follows:

"x x x x x x x x

Employers shall be liable for the damage caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or entity.

The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.

xxx xxx x x x"

(Emphases supplied)

My basic submission that the term "State" as used above properly refers to the "Government of the Republic of the Philippines." This latter term is defined in Section 2 of the Revised Administrative Code of 1987 in the following manner:

"The Government of the Republic of the Philippines refers to the corporate governmental entity through which the functions of government are exercised throughout the `Philippines, including save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the autonomous regions, the provincial, city, municipal or barangay subdivisions or other forms of local government." (Emphases supplied)

In other words, the term "State" as used in Article 2180 of the Civil Code refers to that juridical person that is constituted by the Government of the Republic of the Philippines and logically does not include agencies, instrumentalities or other entities which their enabling laws have invested with juridical personality separate and distinct from that of the Republic of the Philippines.

It should be noted in this connection, that in *Merritt v. Government of the Philippine Islands* (34 Phil. 311 [1960]), the Court said:

"It is therefore evident that the State (the Government of the Philippine Islands) is only liable, according to the above quoted decisions of the Supreme Court of Spain, for acts of its agents, officers and employees when they act as special agents within the meaning of paragraph 5 of Article 1903 [of the Civil Code of Spain of 1889] and that the chauffeur of the ambulance of the General Hospital was not such an agent." (Emphasis supplied; parentheses in the original; 34 Phil. at 323)

Clearly, Mr. Justice Trent considered "the State" and "the Government of the Philippine Islands" as equivalent terms. The decision of the Supreme Court of Spain dated 7 January 1898 which the Court in *Merritt* cited, read in part as follows:

"That the obligation to indemnify for damages, which a third person causes to another by his fault or negligence is based, as is evidenced by the same Law 3, Title 15, Partida 7, on that the person obligated, by his own fault or negligence, takes part in the act or omission of the third party who caused the damage. It follows therefrom that he State, by virtue of such provisions of law, is not responsible for the damages suffered by private individual in consequence of acts performed by its employees in the discharge of the functions pertaining to their office, because neither fault nor even negligence can be presumed on the part of the State in the organization of branches of the public service and in the appointment of its agents; on the contrary, we must presuppose all foresight humanly possible on its part in order that each branch of service serves the general weal and that of private persons interested in its operation. Between these latter and the State, therefore, no relations of a private nature governed by the civil law can arise except in a case where the state acts as a [juridical] person capable of acquiring rights and contracting obligations." (Emphases and brackets supplied)

The term "juridical" person was translated (by Mr. Justice Trent?) as "judicial" person. This appears plain error for the judgment of 7 January 1898 in fact read:

"x x x entre los cuales y el Estado, por tanto, no pueden surgir relaciones de orden privado regidas por el derecho civil, salvo el caso de que el mismo Estado obre como persona juridica capaz de adquirir derechos y

contraer obligaciones:

xxx x xx x x x"

(Emphasis supplied; 83 Jurisprudencia Civil 36 [1898])

Thus, the decision of the Supreme Court of Spain itself recognized that between private persons and the State, relations of a private nature governed by the Civil Code can arise where the State acts as or through the medium of a separate juridical person that is capable of acquiring rights and entering into obligations.

In the present case, there is no question that the NIA has juridical personality separate and distinct from that of the Government of the Republic of the Philippines which owns all NIA's capital and assets. In other words, the NIA is not part of the "State" or of the "Government of the Republic of the Philippines"; it follows, I respectfully submit, that the NIA should not be regarded as part of the State for purposes of application of Article 2180 of the Civil Code.

What have outlined above is in fact very close to the position taken by Mr. Justice Paras in the Resolution on the motion for reconsideration. For he has rightly stressed that the NIA has clearly been invested with a distinct legal personality and thus with capacity to sue and be sue. Judicial actions may be brought by the NIA for the collection of unpaid irrigation fees, drainage fees or other charges which the NIA is authorized to impose and collect, under the provisions of the Rules of Court. Correlatively, actions against the NIA for the recovery of compensation and damages are expressly allowed and prescribe in either five (5) or ten (10) years depending upon the subject matter thereof. The State itself has determined, in other words, that the NIA shall not be covered by the general immunity from suit without its consent pertaining to the State.

Finally, the Resolution underscores the fact that under Section 2(f) of the NIA charter, the NIA is generally authorized "to exercise all the powers of a corporation under the Corporation Law, insofar as they are not inconsistent with the provisions of [the NIA charter]." Since the NIA has been vested with all the powers of a corporate person, it seems only reasonable to believe that it is at the same time subjected to all the ordinary liabilities of a corporate person: one of those liabilities is the vicarious liability of an employer under Article 2180 of the Civil Code, 6th paragraph, for injurious acts done by its employees within the scope of their assigned tasks.

I suggest then that the investing of an agency or instrumentality of the Government with separate juridical personality is not a matter of "form" as suggested by my equally distinguished brother in the Court, Mr. Justice Padilla, in his dissenting opinion. The effect of the foregoing provisions of its charter may be seen to be clearly a matter of "substance": to render the NIA both suable and liable on the same causes of action which may be asserted against any corporate entity that is a separate juridical person.

It seems also relevant to point out that the Philippine General Hospital (PGH), the agency or instrumentality involved in the Merritt case, did not (in contrast with the NIA) have legal personality separate and distinct from that of the Philippine Government at the time that Merritt was decided. The PGH was established under Act No. 1688 of the Philippine Commission as a division of the Bureau of Health, a non-incorporated entity. Later, it was removed from the administrative jurisdiction of the Bureau of Health and made into an independent bureau under the supervision of the Department of the Interior. Still later, the PGH was placed under the Department of Instruction and subsequently, under the Office of the President. In 1947, by virtue of Executive Order No. 94, the PGH was made a part of the University of the Philippines, itself a separate corporate entity. Clearly, therefore, at the time Merritt was decided, the PGH was part and parcel of the Government of the Republic of the Philippines as defined by the Revised Administrative Code of 1917.

For all the foregoing, I vote to DENY the motion for reconsideration and to AFFIRM the Decision dated 1 December 1989 in G.R. Nos. 55963 and 61045.

SEPARATE OPINION

PADILLA, J.:

On 1 December 1989, this Court, through its Second Division, rendered a decision declaring petitioner National Irrigation Administration (NIA, for brevity) a government agency performing proprietary functions. Like an ordinary employer, NIA was held liable for the injuries, resulting in death, of Francisco Fontanilla, caused by the fault and/or negligence of NIA's driver-employee Hugo Garcia; and NIA was ordered to pay petitioner-spouses Fontanilla, the victim's parents, the amounts of P12,000.00 for the death of the victim; P3,389.00 for hospitalization and burial expenses; P30,000.00 as moral damages; P8,000.00 as exemplary damages, and attorney's fees of 20% of the total award.

Assailing the said decision of this Court, NIA filed the present Motion for Reconsideration, alleging that NIA does not perform solely or primarily proprietary functions but is an agency of the government tasked with governmental functions; thus, it may not be held liable for damages for injuries caused by its employee to a third person. Citing PD 552, NIA argues that its functions and responsibilities directly concern public benefit and public welfare.

To start with, NIA is an agency of the government with an original charter.[1] Section 1 of Republic Act 3601 provides:

"SECTION 1. Name and domicile. - A body corporate is hereby created which shall be known as the National Irrigation Administration, hereinafter called the NIA for short, which shall be organized immediately after the approval of this Act. It shall have its principal seat of business in the City of Manila and shall have representatives in all provinces for the proper conduct of its business."

NIA's said charter confers upon it a separate juridical personality to exercise all the powers of a corporation under the Corporation Law, insofar as they are not inconsistent with said charter.[2]

Under PD 552 amending NIA's original charter, it is made clear that said agency was created primarily for the purpose of undertaking integrated irrigation projects, by the construction of multiple-purpose water resource projects to increase agricultural production for the financial upliftment of the people. In relation to its purpose, NIA has the power and authority to undertake concomitant projects, such as, flood control, drainage, land reclamation, hydraulic power development, domestic water supply, road or highway construction, reforestation and projects to maintain ecological balance, in coordination with other agencies concerned. Thus -

"WHEREAS, the enunciation policy is for a comprehensive development, utilization and conservation of water resources of the Philippines and in pursuit of this policy, one of the primary objectives of the National Irrigation Administration is to effectuate an economic means of achieving the optimal and diversified utilization and control of water by undertaking integrated irrigation projects.

"WHEREAS, the National Irrigation Administration assumes as its primary responsibility, the implementation of the irrigation integrated program of the government and the attainment of the 'Irrigation Age', as envisioned under Republic Act No. 3601;

"WHEREAS, an effective means of implementing multiple-purpose projects in line with program-oriented and comprehensive water resources development necessitates broader powers and authority of the NIA to undertake concomitant projects such as flood control, drainage, land reclamation, hydraulic power development, domestic water supply, road or highway construction, reforestation, and projects to maintain ecological balance, in coordination with the agencies concerned;

"WHEREAS, the construction of multiple-purpose water resources projects involves substantial investment of government funds to increase agricultural production for the financial upliftment of the People for them to be able to assume and comply with their obligations and responsibilities to the government."

NIA is thus maintained and operated by the government in the performance of its governmental function of providing the Filipino people, particularly, the farmers nationwide, improved irrigation systems to increase the country's agri-cultural production. Only the government has the capacity and facilities to successfully undertake a project or venture of such magnitude. That the NIA is empowered to charge minimal fees from all the beneficiaries of the irrigation systems that it establishes and operates, does not change the nature of the function or purpose for which it was created. The fees that are collected by NIA are used to cover the cost, of operation, maintenance, insurance, cost of construction, and the rehabilitation of irrigation systems.[3] Such monetary charges do not constitute monetary gain or profit to NIA, but are merely reimbursements of the operational cost of the agency's projects.

It cannot be denied that public service is the thrust in the creation of NIA in contrast to a business venture or proprietary enterprise for monetary gain. That the NIA is also empowered to enter into transactions in order to acquire real and personal properties, appurtenant rights, easements, privileges in the development of its projects[4] and enter into other business transactions, does not mean that it performs proprietary functions, for it is expressly provided in its charter that the business transactions it may enter into are only those which are directly or indirectly necessary, incidental or conducive to the attainment of its purposes and objectives.[5]

Furthermore, the fact that its charter treats the NIA as incorporated under the Corporation Law, and confers upon it a separate juridical personality, is not the test in determining whether it is performing a governmental or proprietary function. The spirit, intent or purpose behind its creation determines its true character. It has been held that where the nature of the duties imposed on an agency and performed by it does not reveal that it was intended to bring any special corporate benefit or pecuniary profit to the government, said agency is deemed to be exercising a governmental function.[6]

After having established that the NIA is a government agency, with an original charter, possessed of juridical personality under the Corporation law, and performing government functions, it is equally important to determine whether (1) the sovereign immunity of the state from suit is enjoyed, or has been waived by NIA and (2) the NIA is liable for damages arising from tort committed by its employees.

For incorporated agencies of the government, the test of its suability is found in its charter. The simple rule is that it is suable if its charter says so, and this is true regardless of the functions it is performing.[7] The charter of the NIA provides that it may sue and be sued, thus, consent of the state for NIA to be sued has been given,[8] so that the rule on immunity from suit normally extended to government agencies performing governmental functions is no longer available to NIA. By waiving that immunity from suit in its charter, it would appear that NIA has opened itself to suits based on causes of action arising from law, contracts, quasi-contracts, delicts, and even quasi-delicts.

But to say that NIA has opened itself to suit is one thing; to say that it is liable for damages arising from tort committed by its employees, is still another thing.

As discussed in the now assailed decision, pursuant to the provisions of substantive law on quasi-delict, whoever by his act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage caused.[9] The obligation imposed by the foregoing rule is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible, such that an employer is held liable for damages caused by its employees who were acting within the scope of their assigned tasks.[10]

But the state or a government agency performing governmental functions may be held liable for tort committed by its employees only when it acts through a special agent.[11]

This is not the first time this Court is confronted with a situation akin to the one at bar. In *Merritt vs. Government of the Phil. Islands*,^[12] the plaintiff was hit by an ambulance of the Philippine General Hospital, while operated by its regular driver. Since the Philippine government was immune from suit, Act No. 2457 was approved by the Philippine legislature which authorized Merritt to sue the Philippine government in the CFI in order to fix the responsibility for the collision and to determine the amount or extent of the damages.

In due course, it was determined that the ambulance operated by the General Hospital's regular driver was responsible for the mishap. The damages sustained by Merritt as a result of the accident was likewise quantified by the trial court and ultimately increased by the Supreme Court.

But then the crucial question remained thus -

"Did the defendant, in enacting the abovequoted Act, simply waive its immunity from suit or did it also concede its liability to the plaintiff? If only the former, then it cannot be held that the Act created any new cause of action in favor of the plaintiff or extended the defendant's liability to any case not previously recognized."

The Court answered its own query thus -

"In the United States the rule that the state is not liable for the torts committed by its officers or agents whom it employs, except when expressly made so by legislative enactment, is well settled. 'The Government,' says Justice Story 'does not undertake to guarantee to any person the fidelity of the officers or agents whom it employs, since that would involve it in all its operations in, endless embarrassments, difficulties and losses, which would be subversive of the public interest.'"⁴ (*Claussen vs. City of Luverne*, 103 Minn., 491, citing *U. S. vs. Kirkpatrick*, 9 Wheat, 720; 6 L. Ed., 199; and *Beers vs. State*, 20 How., 527; 15 L. Ed., 991.)

x x x

"x x x we will now examine the substantive law touching the defendant's liability for the negligent acts of its officers, agents, and employees. Paragraph 5 of article 1903 of the Civil Code reads:

"The state is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding article shall be applicable.

"The supreme court of Spain in defining the scope of this paragraph said:

"That the obligation to indemnify for damages which a third person causes to another by his fault or negligence is based, as is evidenced by the same Law 3, Title 15, Partida 7, on that the person obligated, by his own fault or negligence, takes part in the act or omission of the third party who caused the damage. It follows therefrom that the state, by virtue of such provisions of law, is not responsible for the damages suffered by private individuals in consequence of acts performed by its employees in the discharge of the functions pertaining to their office, because neither fault nor even negligence can be presumed on the part of the state organization of branches of the public service and in the appointment of its agents; on the contrary, we must presuppose all foresight humanly possible on its part in order that each branch of service serves the general weal and that of private persons interested in its operation. Between these latter and the state, therefore, no relations of a private nature governed by the civil law can arise except in a case where the state acts as a judicial person capable of acquiring rights and contracting obligations." (*Supreme Court of Spain*, January 7, 1988; 83 Jur. Civ., 24.)

The dispositive part of the Merritt decision states:

"For the foregoing reasons, the judgment appealed from must be reversed, without costs in this instance. Whether the Government intends to make itself legally liable for the amount of damages above set forth, which the plaintiff has sustained by reason of the negligent acts of one of its employees, by legislative enactment and by appropriating sufficient funds therefor, we are not called upon to determine. This matter rests solely with the Legislature and not with the courts."

This Court in the now assailed decision found that NIA was negligent in the supervision of its driver Hugo Garcia who bumped petitioner-spouses' son, causing the death of the latter -

"It should be emphasized, that the accident happened along the Marikina National Road within the city limits of San Jose City, an urban area. Considering the fact that the victim was thrown 50 meters away from the point of impact, there is a strong indication that driver Garcia was driving at a high speed. This is confirmed by the fact that the pick-up suffered substantial and heavy damage as above-described and the fact that the NIA group was then 'in a hurry to reach the camp-site as early as possible', as shown by their not stopping to find out what they bumped as would have been their normal and initial reaction.

"Evidently, there was negligence in the supervision of the driver for the reason that they were travelling at a high speed within the city limits and yet the supervisor of the group, Ely Salonga, failed to caution and make the driver observe the proper and allowed speed limit within the City. Under the situation, such negligence is further aggravated by their desire to reach their destination without even checking whether or not the vehicle suffered damage from the object it bumped, thus showing imprudence and recklessness on the part of both the driver and the supervisor in the group."[13]

There is thus no doubt that NIA should be held responsible for the negligent acts of its regular driver, resulting in the death of petitioner-spouses' son, except that under Article 2180, par. 6 in relation to Article 2176 of the Civil Code, the state is not liable for tort save when it acts through a special agent, and Hugo Garcia was not a special agent but NIA's regular driver.

Under the circumstances, and in order not to perpetuate a cruel injustice, I believe that this Court, while granting the Solicitor General's motion for reconsideration, should recommend to Congress the enactment of the appropriate legislation to compensate the petitioner-spouses, parents of the victim Francisco Fontanilla, and to appropriate the necessary funds therefor, which could be equal to the amount of damages already determined by this Court.

During the deliberations of this case, it was suggested that the term "State" as used in Article 2180, par. 6 of the Civil Code[14] could be limited to the State proper and not construed to include incorporated entities even if performing governmental functions, such as the NIA. The intended effect of this suggestion would be to render only the State, meaning, the government of the Republic of the Philippines and its unincorporated agencies, such as government bureaus, exempt from liability for tort committed by their officials and employees, except their special agents, but incorporated governmental entities, even if performing governmental (as distinguished from business functions) will be liable for the tort committed by their officials and employees.

I am of the considered opinion that the aforestated suggestion is untenable because it would lay stress on form rather than substance. To me, the test should still be whether the governmental entity performs governmental and, therefore, sovereign functions, regardless of whether it is incorporated or not. If the government agency performs governmental and, therefore, sovereign functions, such as the NIA, it is within the context of the term "State" as used in Art. 2180, par. 6 of the Civil Code and may not, as a consequence, be held liable for tort committed by its officials and employees, except when they are "special agents."

From the ruling of this Court in *Manila Hotel Employees Asso. vs. Manila Hotel*,[15] which states that by "engaging in a particular business thru the instrumentality of a corporation, the government divests itself pro hoc

vice of its sovereign character, so as to render the corporation subject to the rules governing private corporations," it can be reasonably inferred that it is the business character of the corporation and not its corporate form which divests it of the immunity (and, similarly, exemption from liability for tort committed by its employees) which its owner-sovereign enjoys. In the case of *Prisco vs. CIR*,^[16] the suability and liability under labor laws of the Price Stabilization Corporation was based not really on its corporate form but on its abdication of sovereign prerogatives by its descent to the level of an ordinary business operation.^[17]

In an advisory opinion of the Supreme Court of the State of Michigan with respect to the creation of the state housing authority, it was held that a state agency intended to take measures to promote construction of housing, performs a proper governmental function, and that the grant of corporate powers to such an agency makes it a quasi-corporation only but it remains an instrumentality of the state. Such quasi-corporations are described as bodies of citizens who have no personal nor private interests to be subserved, but are simply required by the state to do some public work. The state merely clothes one of its agencies or instrumentalities with such corporate powers. It is neither a private corporation but a class of artificial entity.^[18] The NIA qualifies as a quasi-corporation, retaining at all times the attributes and prerogatives of the sovereign State which entirely owns and operates it.

FOR THE FOREGOING REASONS, I vote to GRANT the Motion for Reconsideration and to SET ASIDE the decision of this Court dated 1 December 1989, subject to the recommendation to Congress as earlier stated.

[1] Republic Act No. 3601, entitled "An Act creating the National Irrigation Administration", as amended by PD 552.

[2] Section 2(f) of PD 552

[3] Section 2(b) of PD 552

[4] Section 2(e) of PD 552

[5] Section 2(f) of PD 552

[6] *Angat River Irrigation System v. Angat River Worker Union*, 102 Phil. 790

[7] Comment of Justice Isagani Cruz; *Philippine Political Law*, Vol. I, p. 39, 1989 Edition

[8] *Olizon v. Central Bank*, G.R. No. L-16524, 30 June 1954, 11 SCRA 357

[9] Civil Code, Article 2176

[10] *Ibid.*, Article 2180

[11] *Ibid.*, par. (6)

[12] 34 Phil. 311 (21 March 1916)

[13] Decision dated 1 December 1989, pp. 10-11

[14] Art. 2180, par. 6, Civil Code states: The obligation imposed by article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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"The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in article 2176

shall be applicable."

[15] 73 Phil. 374

[16] 102 Phil. 515

[17] Phil. Constitutional Law by J. Bernas, p. 783, Vol. 1, 1984 Edition

[18] In re: Advisory Opinion on the Constitutionality of Act No. 346 of Public Acts of 1966, 158 N.W. 2d 416.

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