

Caltex (Phil.), Inc. vs. Customs Arrastre Service

But where the killing is inspired by personal motive such killing is not absorbed by the rebellion but may be subject of separate prosecution (*People vs. Rogado*, L-13025, Dec. 29, 1959).

(b) *Order of superior*.—Obedience to an order of a superior will only justify an act which otherwise would be criminal when the order is for a lawful purpose (*People vs. Rogado, supra*).

(c) *Unconitrollable fear*.—This circumstance was also ruled out where, firstly, at the time of the killing, appellant was armed with an automatic carbine such that he could have protected himself from any retaliation on the part of his superiors if they should threaten to punish him if he disobeyed their order to kill the victim; and, secondly, the victim was brought to a secluded place quite far from that where his superiors were at the time and, in such a predicament, appellant and his companion could have escaped to escape the ire of their superiors. (*People vs. Rogado, supra*).

No. L-26632. May 29, 1970.

CALTEX (PHILIPPINES), INC., plaintiff-appellant, vs. CUSTOMS ARRASTRE SERVICE, ET AL., defendants-appellees.

Customs arrastre; Doctrine of non-suability of state; Reasons.—In *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*, 18 SCRA 1120, it was held that the doctrine of non-suability of the government without its consent bars an action against the Customs Arrastre Service of the Bureau of Customs. There are practical, as distinguished from merely logical, reasons in support of such view. Considering the propensity of our people to go to court and the demands on the government's role as a welfare state, the probability of the government being drag to court in its varied activities is not remote.

Same; Same; Remedy of aggrieved party.—The remedy of a private citizen who feels aggrieved by the government's many undertaking lies in filing a money claim arising from a contract following the procedure provided for in a statute enacted for that purpose.

APPEAL from an order of dismissal of the Court of First Instance of Manila. Nietes, J.

Caltex (Phil.), Inc. vs. Customs Arrastre Service

The facts are stated in the opinion of the Court. *In re* Ross, Selph, Salcedo, Del Rosario, Bito & Misa for plaintiff-appellant.

Solicitor General Antonio P. Barrédo, Assistant Solicitor General Isidro G. Borromeo, Tomas M. Dilig and Felipe T. Cuison for defendants-appellees. *FERNANDO, J.:*

Had plaintiff-appellant, Caltex (Philippines), Inc. been aware that four days prior to the filing of its brief seeking a reversal of an order of the lower court of March 9, 1966 dismissing its complaint against the Customs Arrastre Service, the Bureau of Customs, and the Republic of the Philippines for lost or undelivered cargo in the amount of P9, 859.49 intended for it as consignee, more specifically on December 19, 1966, this Court in *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*¹ held that the doctrine of non-suability of the government without its consent bars such an action, it would likely have desisted from pursuing its appeal. For since then, a similar fate was visited on other litigants, the latest decision, the forty-first, having been promulgated only the other month.² The efforts of appellant to reverse the order of dismissal are thus in vain. We affirm. All that the lower court did in sustaining the motion to dismiss of January 18, 1966 was to submit to the binding force of a fundamental postulate in constitutional law.

The Mobil Philippines doctrine cannot be indicted for unorthodoxy. It represents a continuing manifestation of our commitment, in this respect at least, to the Austinian or positivist concept of law. Under this view, it can be created only by the state. It can flow from no other source. Since without law, there can be no legal right, the state itself is immune from suit unless there be a ma-

¹ L-23129, Dec. 17, 1966, 18 SCRA 1120.

² *Switzerland General Insurance Co. v. Republic of the Philippines*, L-27389, March 30, 1970.

Caltex (Phil.), Inc. vs. Customs Arrastre Service

nifestation of its will through the appropriate mode conferring such a right to sue. To so view the matter, according to Holmes, is both "logical and practical."

That there are practical, as distinguished from merely logical, reasons in support of such a view should be apparent from the recognition of the likelihood that the government would ever so often be hailed into court considering that engaged as it has lately been in varied activities appropriate to a welfare state the probability of private parties being adversely affected by action taken by it is not remote. A loss of property rights could always be plausibly alleged. A claim for money could as easily be conjured. Thus the demands on the government's time and energy could reach limits well-nigh intolerable. After all,

the injury is more fancied than real. Thus the functional or sociological approach to law would seem to call for a similar conclusion.

It might be argued however that precisely because the government is now committed to so many undertakings, it would be an injustice to those who feel adversely the pinch of its actuations if they cannot vindicate whatever legal rights they may have in court. *Providence Washington Insurance Co. v. Republic*⁴ supplies the answer: "At any rate, in case of a money claim arising from contract, express or implied, which could serve as a basis for civil action between private parties, such a consent has been given by a statute enacted by the Philippine legislature, even before the Constitution took effect and still applicable at present." The procedure provided for in such a statute was made more expeditious by a Commonwealth

In the felicitous language of Holmes: "A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." *Kawawanakoa v. Polyblank*, 205 US 349 (1907).

⁴ L-26386, Sept. 30, 1969, 29 SCRA 598.

Republic vs. Borromeo

Act, enabling the party or entity, who feels aggrieved by the final decision of the Auditor General required to decide the claim within sixty days, having the right to go to this Court for final adjudication. It is worthy of note likewise that in the pursuit of its activities affecting business, the government has increasingly relied on private corporations possessing the power to sue and be sued."

It could be correctly concluded then, to quote anew from the same case; "Thus the doctrine of non-suability of the government without its consent, as it has operated in practice, hardly lends itself to the charge that it could be the fruitful parent of injustice, considering the vast and ever-widening scope of state activities at present being undertaken. Whatever difficulties for private claimants may still exist, is from an objective appraisal of all factors, minimal. In the balancing of interests, so unavoidable in the determination of what principles must prevail if government is to satisfy the public weal, the verdict must be, as it has been these so many years, for its continuing recognition as a fundamental postulate of constitutional law."

WHEREFORE; the order of dismissal of March 9, 1966 is affirmed, with costs against plaintiff-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Teehankee and Villamor, JJ., concur.

Barredo, J., did not take part.

Order affirmed.

Note.—Decisions applying the same doctrine are collated in *Providence Washington Insurance Co. vs. Republic*, 29, SCRA 598,

For exceptions to the doctrine, see *Parreño vs. McGranery*, L-4263, Mar. 12, 1953, and *Santos vs. Santos*, 48 O.G. 4815.

No. L-26970: May 29, 1970.

REPUBLIC OF THE PHILIPPINES, petitioner, vs. HON. JOSE BORROMEO, as Judge of the Court of First Instance of