

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
SECOND DIVISION**

**JUSMAG PHILIPPINES,
*Petitioner,***

-versus-

**G.R. No. 108813
December 15, 1994**

**THE NATIONAL LABOR RELATIONS
COMMISSION (Second Division) and
FLORENCIO SACRAMENTO, Union
President, JPFCEA,
*Respondents.***

X-----X

DECISION

PUNO, J.:

The immunity from suit of the Joint United States Military Assistance Group to the Republic of the Philippines (JUSMAG-Philippines) is the pivotal issue in the case at bench.

JUSMAG assails the January 29, 1993 Resolution of the NATIONAL LABOR RELATIONS COMMISSION (public respondent), in NLRC NCR CASE NO. 00-03-02092-92, reversing the July 30, 1991 Order of the Labor Arbiter, and ordering the latter to assume jurisdiction over the complaint for illegal dismissal filed by FLORENCIO SACRAMENTO (private respondent) against petitioner.

First, the undisputed facts.

Private respondent was one of the seventy-four (74) security assistance support personnel (SASP) working at JUSMAG-Philippines.^[1] He had been with JUSMAG from December 18, 1969, until his dismissal on April 27, 1992. When dismissed, he held the position of Illustrator 2 and was the incumbent President of JUSMAG PHILIPPINES-FILIPINO CIVILIAN EMPLOYEES ASSOCIATION (JPFCEA), a labor organization duly registered with the Department of Labor and Employment. His services were terminated allegedly due to the abolition of his position.^[2] He was also advised that he was under administrative leave until April 27, 1992, although the same was not charged against his leave.

On March 31, 1992, private respondent filed a complaint with the Department of Labor and Employment on the ground that he was illegally suspended and dismissed from service by JUSMAG.^[3] He asked for his reinstatement.

JUSMAG then filed a Motion to Dismiss invoking its immunity from suit as an agency of the United States. It further alleged lack of employer-employee relationship and that it has no juridical personality to sue and be sued.^[4]

In an Order dated July 30, 1991, Labor Arbiter Daniel C. Cueto dismissed the subject complaint “for want of jurisdiction.”^[5] Private respondent appealed^[6] to the National Labor Relations Commission (public respondent), assailing the ruling that petitioner is immune from suit for alleged violation of our labor laws. JUSMAG filed its Opposition,^[7] reiterating its immunity from suit for its non-contractual, governmental and/or public acts.

In a Resolution, dated January 29, 1993, the NLRC^[8] reversed the ruling of the Labor Arbiter as it held that petitioner had lost its right not to be sued. The resolution was predicted on two grounds: (1) the principle of estoppel – that JUSMAG failed to refute the existence of employer-employee relationship under the “control test”, and (2) JUSMAG has waived its right to immunity from suit when it hired the services of private respondent on December 18, 1969.

The NLRC relied on the case of Harry Lyons vs. United States of America,^[9] where the “United States Government (was considered to have) waived its immunity from suit by entering into (a) contract of stevedoring services, and thus, it submitted itself to the jurisdiction of the local courts.”

Accordingly, the case was remanded to the labor arbiter for reception of evidence as to the issue on illegal dismissal.

Hence, this petition, JUSMAG contends:

I

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION —

A. IN REVERSING THE DECISION OF THE LABOR ARBITER AND IN NOT AFFIRMING THE DISMISSAL OF THE COMPLAINT IT BEING A SUIT AGAINST THE UNITED STATES OF AMERICA WHICH HAD NOT GIVEN ITS CONSENT TO BE SUED; AND

B. IN FINDING WAIVER BY JUSMAG OF IMMUNITY FROM SUIT;

II

THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION —

A. WHEN IT FOUND AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN JUSMAG AND PRIVATE RESPONDENT; AND

B. WHEN IT CONSIDERED JUSMAG ESTOPPED FROM DENYING THAT PRIVATE RESPONDENT IS ITS

EMPLOYEE FOR FAILURE TO PRESENT PROOF TO THE CONTRARY.

We find the petition impressed with merit.

It is meet to discuss the historical background of the JUSMAG to determine its immunity from suit.

JUSMAG was created pursuant to the Military Assistance Agreement^[10] dated March 21, 1947, between the Government of the Republic of the Philippines and the Government of the United States of America. As agreed upon, JUSMAG shall consist of Air, Naval and Army group, and its primary task was to advise and assist the Philippines, on air force, army and naval matters.^[11]

Article 14 of the 1947 Agreement provides, inter alia, that “the cost of all services required by the Group, including compensation of locally employed interpreters, clerks, laborers, and other personnel, except personal servants, shall be borne by the Republic of the Philippines.”

This set-up was to change in 1991. In Note No 22, addressed to the Department of Foreign Affairs (DFA) of the Philippines, dated January 23, 1991, the United States Government, thru its Embassy, manifested its preparedness “to provide funds to cover the salaries of security assistance support personnel” and security guards, the rent of JUSMAG occupied buildings and housing, and the cost of utilities.^[12] This offer was accepted by our Government, thru the DFA, in Note No. 911725, dated April 18, 1991.^[13]

Consequently, a Memorandum of Agreement^[14] was forged between the Armed Forces of the Philippines and JUSMAG-Philippines, thru General Lisandro C. Abadia and U.S. Brigadier General Robert G. Sausser. The Agreement delineated the terms of the assistance-in-kind of JUSMAG for 1991, the relevant parts of which read:

- “a. The term salaries as used in this agreement include those for the security guards currently contracted between JUSMAG and A Prime Security Services Inc., and the Security Assistance Support Personnel (SASP).

- “b. The term Security Assistance Support Personnel (SASP) does not include active duty uniformed members of the Armed Forces of the Philippines performing duty at JUSMAG.
- “c. It is understood that SASP are employees of the Armed Forces of the Philippines (AFP). Therefore, the AFP agrees to appoint, for service with JUSMAG, no more than 74 personnel to designated positions with JUSMAG.
- “d. SASP are under the total operational control of the Chief, JUSMAG-Philippines. The term “Operational Control” includes, but is not limited to, all personnel administrative actions, such as: hiring recommendations; firing recommendations; position classification; discipline; nomination and approval of incentive awards; and payroll computation. Personnel administration will be guided by Annex E of JUSMAG-Philippines Memo 10-2. For the period of time that there is an exceptional funding agreement between the government of the Philippines and the United States Government (USG), JUSMAG will pay the total payroll costs for the SASP employees. Payroll costs include only regular salary; approved overtime, costs of living allowance; medical insurance; regular contributions to the Philippine Society Security System, PAG-IBIG Fund and Personnel Economic Relief Allowance (PERA); and the thirteenth-month bonus. Payroll costs do not include gifts or other bonus payments in addition to those previously defined above. Entitlements not considered payroll costs under this agreement will be funded and paid by the AFP.
- “e. All SASP employed as of July 1, 1990 will continue their service with JUSMAG at their current rate of pay and benefits up to 30 June 1991, with an annual benefits up employment thereafter subject to renewal of their appointment with the AFP (employees and rates of pay are indicated at Enclosure 3). No promotion or transfer internal to JUSMAG of the listed personnel will result in the reduction of their pay and benefits.

- “f. All SASP will, after proper classification, be paid salaries and benefits at established AFP civilian rates. Rules for computation of pay and allowances will be made available to the Comptroller, JUSMAG, by the Comptroller, GHQ, AFP. Additionally, any legally mandated changes in salary levels or methods of computation shall be transmitted within 48 hours of receipt by Comptroller, GHQ to Comptroller, JUSMAG.
- “g. The AFP agrees not to terminate SASP without 60 days prior written notice to Chief, JUSMAG-Philippines. Any termination of these personnel thought to be necessary because of budgetary restrictions or manpower ceiling will be subject to consultations between AFP and JUSMAG to ensure that JUSMAG’s mission of dedicated support to the AFP will not be degraded or harmed in any way.
- “h. The AFP agrees to assume the severance pay/retirement pay liability for all appointed SASP. (Enclosure 3 lists the severance pay liability date for current SASP). Any termination of services, other than voluntary resignations or termination for cause, will result in immediate payments of AFP of all termination pay to the entitled employee. Vouchers for severance/retirement pay and accrued bonuses and annual leave will be presented to the Comptroller, GHQ, AFP, not later than 14 calendar days prior to required date of payment.
- “i. All SASP listed in Enclosure 3 will continue to participate in the Philippine Social Security System.

A year later, or in 1992, the United States Embassy sent another note of similar import to the Department of Foreign Affairs (No. 227, dated April 8, 1992), extending the funding agreement for the salaries of SASP and security guards until December 31, 1992.

From the foregoing, it is apparent that when JUSMAG took the services of private respondent, it was performing a governmental function on behalf of the United States pursuant to the Military Assistance Agreement dated March 21, 1947. Hence, we agree with

petitioner that the suit is, in effect, one against the United States Government, albeit it was not impleaded in the complaint. Considering that the United States has not waived or consented to the suit, the complaint against JUSMAG cannot not prosper.

In this jurisdiction, we recognize and adopt the generally accepted principles of international law as part of the law of the land.^[15] Immunity of State from suit is one of these universally recognized principles. In international law, “immunity” is commonly understood as an exemption of the state and its organs from the judicial jurisdiction of another state.^[16] This is anchored on the principle of the sovereign equality of states under which one state cannot assert jurisdiction over another in violation of the *maxim par in parem non habet imperium* (an equal has no power over an equal).^[17]

Under the traditional rule of State immunity, a state cannot be sued in the courts of another State, without its consent or waiver. However, in *Santos, et al., vs. Santos, et al.*,^[18] we recognized an exception to the doctrine of immunity from suit by a state, thus:

“Nevertheless, if, where and when the state or its government enters into a contract, through its officers or agents, in furtherance of a legitimate aim and purpose and pursuant to constitutional legislative authority, whereby mutual and reciprocal benefits accrue and rights and obligations arise therefrom, and if the law granting the authority to enter into such contract does not provide for or name the officer against whom action may be brought in the event of the breach thereof, the state itself may be sued, even without its consent, because by entering into a contract, the sovereign state has descended to the level of the citizen and its consent to be sued is implied from the very act of entering into such contract.” (Emphasis ours)

It was in this light that the state immunity issue in *Harry Lyons, Inc., vs. Unites States of America*^[19] was decided.

In the case of *Harry Lyons, Inc.*, the petitioner entered into a contract with the United States Government for stevedoring services at the U.S. Naval Base, Subic Bay, Philippines. It then sought to collect from the US government sums of money arising from the contract. One of

the issues posed in the case was whether or not the defunct Court of First Instance had jurisdiction over the defendant United States, a sovereign state which cannot be sued without its consent. This Court upheld the contention of Harry Lyons, Inc., that “when a sovereign state enters into a contract with a private person, the state can be sued upon the theory that it has descended to the level of an individual from which it can be implied that it has given its consent to be sued under the contract.”

The doctrine of state immunity from suit has undergone further metamorphosis. The view evolved that the existence of a contract does not, per se, mean that sovereign states may, at all times, be sued in local courts. The complexity of relationships between sovereign states, brought about by their increasing commercial activities, mothered a more restrictive application of the doctrine.^[20] Thus, in *United States of America vs. Ruiz*,^[21] we clarified that our pronouncement in *Harry Lyons, supra*, with respect to the waiver of State immunity, was obiter and “has no value as an imperative authority.”

As it stands now, the application of the doctrine of immunity from suit has been restricted to sovereign or governmental activities (*jure imperii*).^[22] The mantle of state immunity cannot be extended to commercial, private and proprietary acts (*jure gestionis*). As aptly stated by this Court (En banc) in *US vs. Ruiz, supra*:

“The restrictive application of State immunity is proper 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 thus can be deemed to have tacitly given its consent to be used only when it enters into business contracts. It does not apply where the contract relates to the exercise of its sovereign functions.” (Emphasis ours)

We held further, that the application of the doctrine of state immunity depends on the legal nature of the act. Ergo, since a governmental function was involved — the transaction dealt with the improvement of the wharves in the naval installation at Subic Bay —

it was held that the United States was not deemed to have waived its immunity from suit.

Then came the case of *United States vs. Hon. Rodrigo, et al.* 23 In said case, Genove was employed as a cook in the Main Club located at U.S. Air Force Recreation Center, John Hay Air Station. He was dismissed from service after he was found to have polluted the stock of soup with urine. Genove countered with a complaint for damages. Apparently, the restaurant services offered at the John Hay Air Station partake of the nature of a business enterprise undertaken by the United States government in its proprietary capacity. The Court then noted that the restaurant is well known and available to the general public, thus, the services are operated for profit, as a commercial and not a governmental activity. Speaking through Associate Justice Isagani Cruz, the Court (En Banc) said:

“The consequence of this finding is that the petitioners cannot invoke the doctrine of state immunity to justify the dismissal of the damage suit against them by Genove. Such defense will not prosper even if it be established that they were acting as agents of the United States when they investigated and later dismissed Genove. For the matter, not even the United States governmental itself can claim such immunity. The reason is that by entering into the employment contract with Genove in the discharge of its proprietary functions, it impliedly divested itself of its sovereign immunity from suit.” (Emphasis ours)

Conversely, if the contract was entered into in the discharge of its governmental functions, the sovereign state cannot be deemed to have waived its immunity from suit.^[24] Such is the case at bench. Prescinding from this premise, we need not determine whether JUSMAG controls the employment conditions of the private respondent.

We also hold that there appears to be no basis for public respondent to rule that JUSMAG is stopped from denying the existence of employer-employee relationship with private respondent. On the contrary, in its Opposition before the public respondent, JUSMAG consistently contended that the (74) SASP, including private respondent, working in JUSMAG, are employees of the Armed Forces

of the Philippines. This can be gleaned from: (1) the Military Assistance Agreement, supra, (2) the exchange of notes between our Government, thru Department of Foreign Affairs, and the United States, thru the US Embassy to the Philippines, and (3) the Agreement on May 21, 1991, supra between the Armed Forces of the Philippines and JUSMAG.

We sympathize with the plight of private respondent who had served JUSMAG for more than twenty (20) years. Considering his length of service with JUSMAG, he deserves a more compassionate treatment. Unfortunately, JUSMAG is beyond the jurisdiction of this Court. Nonetheless, the Executive branch, through the Department of Foreign Affairs and the Armed Forces of the Philippines, can take the cudgel for private respondent to the aforesaid Military Assistance Agreement.

IN VIEW OF THE FOREGOING, the petition for certiorari is **GRANTED**. Accordingly, the impugned Resolution dated January 29, 1993 of the National Labor Relations Commission is **REVERSED** and **SET ASIDE**. No costs.

SO ORDERED.

Narvasa, C.J., Regalado and Mendoza, JJ., concur.

[1] See Enclosure No. 3, marked as Annex "E"; Rollo, p. 47.

[2] Memorandum dated March 27, 1992.

[3] Annex "G" of Petition; Rollo, p. 51.

[4] Annex "H" of Petition; Rollo, p. 52

[5] Rollo, pp. 86-88.

[6] Annex "J" of Petition; Rollo, p. 89.

[7] Annex "K" of Petition; Rollo, p. 121.

[8] Second Division.

[9] No. L-11786, September 26, 1958, 104 SCRA 593.

[10] The Republic of the Philippines was represented by then President MANUEL ROXAS, while the United States of America was represented by its Ambassador Extraordinary and Plenipotentiary to the Republic of the Philippines, PAUL MCNUTT.

[11] Annex "A" of Petition; Rollo, p. 32.

[12] Annex "B" of Petition; Rollo, p. 38

[13] Annex "C" of Petition; Rollo, p. 40.

- [14] Annex “D” of Petition; Rollo, p. 42.
- [15] Section 2, Article II of the 1987 Constitution.
- [16] Henkin, Pugh, Schachter, Smit, International Law, Cases and Materials, Second Edition, p. 898.
- [17] Cruz, Philippine Political Law, 1991 ed., p. 29.
- [18] No. L-4699, November 26, 1952, 92 Phil 281.
- [19] Op cit.
- [20] See US vs. Ruiz , infra.
- [21] G.R. No. L-35645, May 22, 1985, 136 SCRA 487, 490.
- [22] The restrictive application of immunity from suit is also adopted in other countries, such as — Belgium, Italy, Egypt, Switzerland (Henkin, Pugh, Schachter, Smit, International Law, Cases and Materials, Second Edition, p. 906).
- [23] G.R. No. 79470, February 26, 1990, 182 SCRA 644, 660.
- [24] Unites States vs. Ruiz, supra.