**SUPREME COURT**
**EN BANC**

**UNITED STATES OF AMERICA, FREDERICK M. SMOUSE AND YVONNE REEVES,**
***Petitioners*,**

***-versus-***

**G.R. No. 76607**
**February 26, 1990**

**HON. ELIODORO B. GUINTO, Presiding Judge, Branch LVII, Regional Trial Court, Angeles City, ROBERTO T. VALENCIA, EMERENCIANA C. TANGLAO, AND PABLO C. DEL PILAR,**
***Respondents*.**

**x----------x**

**UNITED STATES OF AMERICA, ANTHONY LAMACHIA, T/SGT. USAF, WILFREDO BELSA, PETER ORASCION AND ROSE CARTALLA,**
***Petitioners*,**

***-versus-***

**G.R. No. 79470**
**February 26, 1990**

**HON. RODOLFO D. RODRIGO, as Presiding Judge of Branch 7, Regional Trial Court (BAGUIO CITY), La**

**Trinidad, Benguet and FABIAN GENOVE,**

***Respondents.***

**x----------x**

**UNITED STATES OF AMERICA, TOMI J. KINGI, DARREL D. DYE and STEVEN F. BOSTICK,**

***Petitioners*,**

***-versus-***

**G.R. No. 80018**
**February 26, 1990**

**HON. JOSEFINA D. CEBALLOS, As Presiding Judge, Regional Trial Court, Branch 66, Capas, Tarlac, and LUIS BAUTISTA,**

***Respondents.***

**x----------x**

**UNITED STATES OF AMERICA, MAJOR GENERAL MICHAEL P. C. CARNS, AIC ERNEST E. RIVENBURGH, AIC ROBIN BLEVINS, SGT. NOEL A. GONZALES, SGT. THOMAS MITCHELL, SGT. WAYNE L. BENJAMIN, ET AL.,**

***Petitioners*,**

***-versus-***

**G.R. No. 80258**
**February 26, 1990**

**HON. CONCEPCION S. ALARCON VERGARA, as Presiding Judge, Branch 62 REGIONAL TRIAL COURT, Angeles City, and RICKY SANCHEZ, FREDDIE SANCHEZ AKA FREDDIE RIVERA,**

**EDWIN MARIANO, AKA JESSIE DOLORES SANGALANG, ET AL.,**
***Respondents.***
**x----------x**

**D E C I S I O N**

**CRUZ, *J.*:**

These cases have been consolidated because they all involve the doctrine of state immunity. The United States of America was not impleaded in the complaints below but has moved to dismiss on the ground that they are in effect suits against it to which it has not consented. It is now contesting the denial of its motions by the respondent judges.

In G.R. No. 76607, the private respondents are suing several officers of the U.S. Air Force stationed in Clark Air Base in connection with the bidding conducted by them for contracts for barbering services in the said base.

On February 24, 1986, the Western Pacific Contracting Office, Okinawa Area Exchange, U.S. Air Force, solicited bids for such contracts through its contracting officer, James F. Shaw. Among those who submitted their bids were private respondents Roberto T. Valencia, Emerenciana C. Tanglao, and Pablo C. del Pilar. Valencia had been a concessionaire inside Clark for 34 years; del Pilar for 12 years; and Tanglao for 50 years.

The bidding was won by Ramon Dizon, over the objection of the private respondents, who claimed that he had made a bid for four facilities, including the Civil Engineering Area, which was not included in the invitation to bid.

The private respondents complained to the Philippine Area Exchange (PHAX). The latter, through its representatives, petitioners Yvonne Reeves and Frederic M. Smouse, explained that the Civil Engineering

concession had not been awarded to Dizon as a result of the February 24, 1986 solicitation. Dizon was already operating this concession, then known as the NCO club concession, and the expiration of the contract had been extended from June 30, 1986 to August 31, 1986. They further explained that the solicitation of the CE barbershop would be available only by the end of June and the private respondents would be notified.

On June 30,1986, the private respondents filed a complaint in the court below to compel PHAX and the individual petitioners to cancel the award to defendant Dizon, to conduct a rebidding for the barbershop concessions and to allow the private respondents by a writ of preliminary injunction to continue operating the concessions pending litigation.[1]

Upon the filing of the complaint, the respondent court issued an ex parte order directing the individual petitioners to maintain the status quo.

On July 22, 1986, the petitioners filed a motion to dismiss and opposition to the petition for preliminary injunction on the ground that the action was in effect a suit against the United States of America, which had not waived its non-suability. The individual defendants, as officials/employees of the U.S. Air Force, were also immune from suit.

On the same date, July 22, 1986, the trial court denied the application for a writ of preliminary injunction.

On October 10, 1988, the trial court denied the petitioners' motion to dismiss, holding in part as follows:

> From the pleadings thus far presented to this Court by the parties, the Court's attention is called by the relationship between the plaintiffs as well as the defendants, including the US Government in that prior to the bidding or solicitation in question, there was a binding contract between the plaintiffs as well as the defendants, including the US Government. By virtue of said contract of concession, it is the Court's understanding that neither the US Government nor the herein principal defendants

> would become the employer/s of the plaintiffs but that the latter are the employers themselves of the barbers, etc. with the employer, the plaintiffs herein, remitting the stipulated percentage of commissions to the Philippine Area Exchange. The same circumstance would become m effect when the Philippine Area Exchange opened for bidding or solicitation the questioned barber shop concessions. To this extent, therefore, indeed a commercial transaction has been entered, and for purposes of the said solicitation, would necessarily be entered between the plaintiffs as well as the defendants.
>
> The Court, further, is of the view that Article XVIII of the RP-US Bases Agreement does not cover such kind of services falling under the concessionaireship, such as a barber shop concession.[2]

On December 11, 1986, following the filing of the herein petition for certiorari and prohibition with preliminary injunction, we issued a temporary restraining order against further proceedings in the court below.[3]

In G.R. No. 79470, Fabian Genove filed a complaint for damages against petitioners Anthony Lamachia, Wilfredo Belsa, Rose Cartalla and Peter Orascion for his dismissal as cook in the U.S. Air Force Recreation Center at the John Hay Air Station in Baguio City. It had been ascertained after investigation, from the testimony of Belsa, Cartalla and Orascion, that Genove had poured urine into the soup stock used in cooking the vegetables served to the club customers. Lamachia, as club manager, suspended him and thereafter referred the case to a board of arbitrators conformably to the collective bargaining agreement between the Center and its employees. The board unanimously found him guilty and recommended his dismissal. This was effected on March 5, 1986, by Col. David C. Kimball, Commander of the 3rd Combat Support Group, PACAF Clark Air Force Base. Genove's reaction was to file his complaint in the Regional Trial Court of Baguio City against the individual petitioners.[4]

On March 13, 1987, the defendants, joined by the United States of America, moved to dismiss the complaint, alleging that Lamachia, as

an officer of the U.S. Air Force stationed at John Hay Air Station, was immune from suit for the acts done by him in his official capacity. They argued that the suit was in effect against the United States, which had not given its consent to be sued.

This motion was denied by the respondent judge on June 4, 1987, in an order which read in part:

> It is the understanding of the Court, based on the allegations of the complaint — which have been hypothetically admitted by defendants upon the filing of their motion to dismiss — that although defendants acted initially in their official capacities, their going beyond what their functions called for brought them out of the protective mantle of whatever immunities they may have had in the beginning. Thus, the allegation that the acts complained of were "illegal," done, with "extreme bad faith" and with "pre-conceived sinister plan to harass and finally dismiss" the plaintiff, gains significance.[5]

The petitioners then came to this Court seeking certiorari and prohibition with preliminary injunction.

In G.R. No. 80018, Luis Bautista, who was employed as a barracks boy in Camp O'Donnell, an extension of Clark Air Base, was arrested following a buy-bust operation conducted by the individual petitioners herein, namely, Tomi J. King, Darrel D. Dye and Stephen F. Bostick, officers of the U.S. Air Force and special agents of the Air Force Office of Special Investigators (AFOSI). On the basis of the sworn statements made by them, an information for violation of R.A. 6425, otherwise known as the Dangerous Drugs Act, was filed against Bautista in the Regional Trial Court of Tarlac. The above-named officers testified against him at his trial. As a result of the filing of the charge, Bautista was dismissed from his employment. He then filed a complaint for damages against the individual petitioners herein claiming that it was because of their acts that he was removed.[6]

During the period for filing of the answer, Mariano Y. Navarro, a special counsel assigned to the International Law Division, Office of the Staff Judge Advocate of Clark Air Base, entered a special appearance for the defendants and moved for an extension within

which to file an "answer and/or other pleadings." His reason was that the Attorney General of the United States had not yet designated counsel to represent the defendants, who were being sued for their official acts. Within the extended period, the defendants, without the assistance of counsel or authority from the U.S. Department of Justice, filed their answer. They alleged therein as affirmative defenses that they had only done their duty in the enforcement of the laws of the Philippines inside the American bases pursuant to the RP-US Military Bases Agreement.

On May 7, 1987, the law firm of Luna, Sison and Manas, having been retained to represent the defendants, filed with leave of court a motion to withdraw the answer and dismiss the complaint. The ground invoked was that the defendants were acting in their official capacity when they did the acts complained of and that the complaint against them was in effect a suit against the United States without its consent.

The motion was denied by the respondent judge in his order dated September 11, 1987, which held that the claimed immunity under the Military Bases Agreement covered only criminal and not civil cases. Moreover, the defendants had come under the jurisdiction of the court when they submitted their answer.[7]

Following the filing of the herein petition for certiorari and prohibition with preliminary injunction, we issued on October 14, 1987, a temporary restraining order.[8]

In G.R. No. 80258, a complaint for damages was filed by the private respondents against the herein petitioners (except the United States of America), for injuries allegedly sustained by the plaintiffs as a result of the acts of the defendants.[9] There is a conflict of factual allegations here. According to the plaintiffs, the defendants beat them up, handcuffed them and unleashed dogs on them which bit them in several parts of their bodies and caused extensive injuries to them. The defendants deny this and claim the plaintiffs were arrested for theft and were bitten by the dogs because they were struggling and resisting arrest. The defendants stress that the dogs were called off and the plaintiffs were immediately taken to the medical center for treatment of their wounds.

In a motion to dismiss the complaint, the United States of America and the individually named defendants argued that the suit was in effect a suit against the United States, which had not given its consent to be sued. The defendants were also immune from suit under the RP-US Bases Treaty for acts done by them in the performance of their official functions.

The motion to dismiss was denied by the trial court in its order dated August 10, 1987, reading in part as follows:

> The defendants certainly cannot correctly argue that they are immune from suit. The allegations, of the complaint which is sought to be dismissed, had to be hypothetically admitted and whatever ground the defendants may have, had to be ventilated during the trial of the case on the merits. The complaint alleged criminal acts against the individually-named defendants and from the nature of said acts it could not be said that they are Acts of State, for which immunity should be invoked. If the Filipinos themselves are duty bound to respect, obey and submit themselves to the laws of the country, with more reason, the members of the United States Armed Forces who are being treated as guests of this country should respect, obey and submit themselves to its laws.[10]

and so was the motion for reconsideration. The defendants submitted their answer as required but subsequently filed their petition for certiorari and prohibition with preliminary injunction with this Court. We issued a temporary restraining order on October 27, 1987.[11]

II

The rule that a state may not be sued without its consent, now expressed in Article XVI, Section 3, of the 1987 Constitution, is one of the generally accepted principles of international law that we have adopted as part of the law of our land under Article II, Section 2. This latter provision merely reiterates a policy earlier embodied in the 1935 and 1973 Constitutions and also intended to manifest our resolve to abide by the rules of the international community.

Even without such affirmation, we would still be bound by the generally accepted principles of international law under the doctrine of incorporation. Under this doctrine, as accepted by the majority of states, such principles are deemed incorporated in the law of every civilized state as a condition and consequence of its membership in the society of nations. Upon its admission to such society, the state is automatically obligated to comply with these principles in its relations with other states.

As applied to the local state, the doctrine of state immunity is based on the justification given by Justice Holmes that "there can be no legal right against the authority which makes the law on which the right depends."[12] There are other practical reasons for the enforcement of the doctrine. In the case of the foreign state sought to be impleaded in the local jurisdiction, the added inhibition is expressed in the maxim par in parem, non habet imperium. All states are sovereign equals and cannot assert jurisdiction over one another. A contrary disposition would, in the language of a celebrated case, "unduly vex the peace of nations."[13]

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.[14] In such a situation, the state may move to dismiss the complaint on the ground that it has been filed without its consent.

The doctrine is sometimes derisively called "the royal prerogative of dishonesty" because of the privilege it grants the state to defeat any legitimate claim against it by simply invoking its non-suability. That is hardly fair, at least in democratic societies, for the state is not an unfeeling tyrant unmoved by the valid claims of its citizens. In fact, the doctrine is not absolute and does not say the state may not be sued under any circumstance. On the contrary, the rule says that the

state may not be sued without its consent, which clearly imports that it may be sued if it consents.

The consent of the state to be sued may be manifested expressly or impliedly. Express consent may be embodied in a general law or a special law. Consent is implied when the state enters into a contract or it itself commences litigation.

The general law waiving the immunity of the state from suit is found in Act No. 3083, under which the Philippine government "consents and submits to be sued upon any moneyed claim involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties." In Merritt vs. Government of the Philippine Islands,[15] a special law was passed to enable a person to sue the government for an alleged tort. When the government enters into a contract, it is deemed to have descended to the level of the other contracting party and divested of its sovereign immunity from suit with its implied consent.[16] Waiver is also implied when the government files a complaint, thus opening itself to a counterclaim.[17]

The above rules are subject to qualification. Express consent is effected only by the will of the legislature through the medium of a duly enacted statute.[18] We have held that not all contracts entered into by the government will operate as a waiver of its non-suability; distinction must be made between its sovereign and proprietary acts.[19] As for the filing of a complaint by the government, suability will result only where the government is claiming affirmative relief from the defendant.[20]

In the case of the United States of America, the customary rule of international law on state immunity is expressed with more specificity in the RP-US Bases Treaty. Article III thereof provides as follows:

> It is mutually agreed that the United States shall have the rights, power and authority within the bases which are necessary for the establishment, use, operation and defense thereof or appropriate for the control thereof and all the rights, power and authority within the limits of the territorial waters and air space adjacent to, or in the vicinity of, the bases which

> are necessary to provide access to them or appropriate for their control.

The petitioners also rely heavily on Baer vs. Tizon,[21] along with several other decisions, to support their position that they are not suable in the cases below, the United States not having waived its sovereign immunity from suit. It is emphasized that in Baer, the Court held:

> The invocation of the doctrine of immunity from suit of a foreign state without its consent is appropriate. More specifically, insofar as alien armed forces is concerned, the starting point is Raquiza vs. Bradford, a 1945 decision. In dismissing a habeas corpus petition for the release of petitioners confined by American army authorities, Justice Hilado, speaking for the Court, cited Coleman vs. Tennessee, where it was explicitly declared: `It is well settled that a foreign army, permitted to march through a friendly country or to be stationed in it, by permission of its government or sovereign, is exempt from the civil and criminal jurisdiction of the place.' Two years later, in Tubb and Tedrow vs. Griess, this Court relied on the ruling in Raquiza vs. Bradford and cited in support thereof excerpts from the works of the following authoritative writers: Vattel, Wheaton, Hall, Lawrence, Oppenheim, Westlake, Hyde, and McNair and Lauterpacht. Accuracy demands the clarification that after the conclusion of the Philippine-American Military Bases Agreement, the treaty provisions should control on such matter, the assumption being that there was a manifestation of the submission to jurisdiction on the part of the foreign power whenever appropriate. More to the point is Syquia vs. Almeda Lopez, where plaintiffs as lessors sued the Commanding General of the United States Army in the Philippines, seeking the restoration to them of the apartment buildings they owned leased to the United States armed forces stationed in the Manila area. A motion to dismiss on the ground of non-suability was filed and upheld by respondent Judge. The matter was taken to this Court in a mandamus proceeding. It failed. It was the ruling that respondent Judge acted correctly considering that the `action must be considered as one against the U.S. Government.' The opinion of Justice Montemayor

continued: `It is clear that the courts of the Philippines including the Municipal Court of Manila have no jurisdiction over the present case for unlawful detainer. The question of lack of jurisdiction was raised and interposed at the very beginning of the action. The U.S. Government has not given its consent to the filing of this suit which is essentially against her, though not in name. Moreover, this is not only a case of a citizen filing a suit against his own Government without the latter's consent but it is of a citizen filing an action against a foreign government without said government's consent, which renders more obvious the lack of jurisdiction of the courts of his country. The principles of law behind this rule are so elementary and of such general acceptance that we deem it unnecessary to cite authorities in support thereof.' Then came Marvel Building Corporation vs. Philippine War Damage Commission, where respondent, a United States Agency established to compensate damages suffered by the Philippines during World War II was held as falling within the above doctrine as the suit against it `would eventually be a charge against or financial liability of the United States Government because, the Commission has no funds of its own for the purpose of paying money judgments.' The Syquia ruling was again explicitly relied upon in Marquez Lim vs. Nelson, involving a complaint for the recovery of a motor launch, plus damages, the special defense interposed being `that the vessel belonged to the United States Government, that the defendants merely acted as agents of said Government, and that the United States Government is therefore the real party in interest.' So it was in Philippine Alien Property Administration vs. Castelo, where it was held that a suit against Alien Property Custodian and the Attorney General of the United States involving vested property under the Trading with the Enemy Act is in substance a suit against the United States. To the same effect is Parreno vs. McGranery, as the following excerpt from the opinion of Justice Tuazon clearly shows: `It is a widely accepted principle of international law, which is made a part of the law of the land (Article II, Section 3 of the Constitution), that a foreign state may not be brought to suit before the courts of another state or its own courts without its consent.' Finally, there is Johnson vs. Turner, an appeal by the defendant, then Commanding General,

> Philippine Command (Air Force, with office at Clark Field) from a decision ordering the return to plaintiff of the confiscated military payment certificates known as scrip money. In reversing the lower court decision, this Tribunal, through Justice Montemayor, relied on Syquia vs. Almeda Lopez, explaining why it could not be sustained.

It bears stressing at this point that the above observations do not confer on the United States of America a blanket immunity for all acts done by it or its agents in the Philippines. Neither may the other petitioners claim that they are also insulated from suit in this country merely because they have acted as agents of the United States in the discharge of their official functions.

There is no question that the United States of America, like any other state, will be deemed to have impliedly waived its non-suability if it has entered into a contract in its proprietary or private capacity. It is only when the contract involves its sovereign or governmental capacity that no such waiver may be implied. This was our ruling in United States of America vs. Ruiz,[22] where the transaction in question dealt with the improvement of the wharves in the naval installation at Subic Bay. As this was a clearly governmental function, we held that the contract did not operate to divest the United States of its sovereign immunity from suit. In the words of Justice Vicente Abad Santos:

> The traditional rule of immunity exempts a State from being sued in the courts of another State without its consent or waiver. This rule is a necessary consequence of the principles of independence and equality of States. However, the rules of International Law are not petrified; they are constantly developing and evolving. And because the activities of states have multiplied, it has been necessary to distinguish them — between sovereign and governmental acts (jure imperii) and private, commercial and proprietary acts (jure gestionis). The result is that State immunity now extends only to acts jure imperii. The restrictive application of State immunity is now the rule in the United States, the United Kingdom and other states in Western Europe.

x x x

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 business contracts. It does not apply where the contract relates to the exercise of its sovereign functions. In this case the projects are an integral part of the naval base which is devoted to the defense of both the United States and the Philippines, indisputably a function of the government of the highest order; they are not utilized for nor dedicated to commercial or business purposes.

The other petitioners in the cases before us all aver they have acted in the discharge of their official functions as officers or agents of the United States. However, this is a matter of evidence. The charges against them may not be summarily dismissed on their mere assertion that their acts are imputable to the United States of America, which has not given its consent to be sued. In fact, the defendants are sought to be held answerable for personal torts in which the United States itself is not involved. If found liable, they and they alone must satisfy the judgment.

In Festejo vs. Fernando,[23] a bureau director, acting without any authority whatsoever, appropriated private land and converted it into public irrigation ditches. Sued for the value of the lots invalidly taken by him, he moved to dismiss the complaint on the ground that the suit was in effect against the Philippine government, which had not given its consent to be sued. This Court sustained the denial of the motion and held that the doctrine of state immunity was not applicable. The director was being sued in his private capacity for a personal tort.

With these considerations in mind, we now proceed to resolve the cases at hand.

III

It is clear from a study of the records of G.R. No. 80018 that the individually-named petitioners therein were acting in the exercise of their official functions when they conducted the buy-bust operation against the complainant and thereafter testified against him at his trial. The said petitioners were in fact connected with the Air Force Office of Special Investigators and were charged precisely with the function of preventing the distribution, possession and use of prohibited drugs and prosecuting those guilty of such acts. It cannot for a moment be imagined that they were acting in their private or unofficial capacity when they apprehended and later testified against the complainant. It follows that for discharging their duties as agents of the United States, they cannot be directly impleaded for acts imputable to their principal, which has not given its consent to be sued. As we observed in Sanders vs. Veridiano:[24]

> Given the official character of the above-described letters, we have to conclude that the petitioners were, legally speaking, being sued as officers of the United States government. As they have acted on behalf of that government, and within the scope of their authority, it is that government, and not the petitioners personally, that is responsible for their acts.
>
> The private respondent invokes Article 2180 of the Civil Code which holds the government liable if it acts through a special agent. The argument, it would seem, is premised on the ground that since the officers are designated "special agents," the United States government should be liable for their torts.
>
> There seems to be a failure to distinguish between suability and liability and a misconception that the two terms are synonymous. Suability depends on the consent of the state to be sued, liability on the applicable law and the established facts. The circumstance that a state is suable does not necessarily mean that it is liable; on the other hand, it can never be held liable if it does not first consent to be sued. Liability is not conceded by the mere fact that the state has allowed itself to be sued. When the state does waive its sovereign immunity, it is

only giving the plaintiff the chance to prove, if it can, that the defendant is liable.

The said article establishes a rule of liability, not suability. The government may be held liable under this rule only if it first allows itself to be sued through any of the accepted forms of consent.

Moreover, the agent performing his regular functions is not a special agent even if he is so denominated, as in the case at bar. No less important, the said provision appears to regulate only the relations of the local state with its inhabitants and, hence, applies only to the Philippine government and not to foreign governments impleaded in our courts.

We reject the conclusion of the trial court that the answer filed by the special counsel of the Office of the Sheriff Judge Advocate of Clark Air Base was a submission by the United States government to its jurisdiction. As we noted in Republic vs. Purisima,[25] express waiver of immunity cannot be made by a mere counsel of the government but must be effected through a duly-enacted statute. Neither does such answer come under the implied forms of consent as earlier discussed.

But even as we are certain that the individual petitioners in G.R. No. 80018 were acting in the discharge of their official functions, we hesitate to make the same conclusion in G.R. No. 80258. The contradictory factual allegations in this case deserve in our view a closer study of what actually happened to the plaintiffs. The record is too meager to indicate if the defendants were really discharging their official duties or had actually exceeded their authority when the incident in question occurred. Lacking this information, this Court cannot directly decide this case. The needed inquiry must first be made by the lower court so it may assess and resolve the conflicting claims of the parties on the basis of the evidence that has yet to be presented at the trial. Only after it shall have determined in what capacity the petitioners were acting at the time of the incident in question will this Court determine, if still necessary, if the doctrine of state immunity is applicable.

In G.R. No. 79470, private respondent Genove was employed as a cook in the Main Club located at the U.S. Air Force Recreation Center, also known as the Open Mess Complex, at John Hay Air Station. As manager of this complex, petitioner Lamachia is responsible for eleven diversified activities generating an annual income of $2 million. Under his executive management are three service restaurants, a cafeteria, a bakery, a Class VI store, a coffee and pantry shop, a main cashier cage, an administrative office, and a decentralized warehouse which maintains a stock level of $200,000.00 per month in resale items. He supervises 167 employees, one of whom was Genove, with whom the United States government has concluded a collective bargaining agreement.

From these circumstances, the Court can assume that 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. Such services are not extended to the American servicemen for free as a perquisite of membership in the Armed Forces of the United States. Neither does it appear that they are exclusively offered to these servicemen; on the contrary, it is well known that they are available to the general public as well, including the tourists in Baguio City, many of whom make it a point to visit John Hay for this reason. All persons availing themselves of this facility pay for the privilege like all other customers as in ordinary restaurants. Although the prices are concededly reasonable and relatively low, such services are undoubtedly operated for profit, as a commercial and not a governmental activity.

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 that matter, not even the United States government 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.

But these considerations notwithstanding, we hold that the complaint against the petitioners in the court below must still be dismissed. While suable, the petitioners are nevertheless not liable. It is obvious that the claim for damages cannot be allowed on the strength of the evidence before us, which we have carefully examined.

The dismissal of the private respondent was decided upon only after a thorough investigation where it was established beyond doubt that he had polluted the soup stock with urine. The investigation, in fact, did not stop there. Despite the definitive finding of Genove's guilt, the case was still referred to the board of arbitrators provided for in the collective bargaining agreement. This board unanimously affirmed the findings of the investigators and recommended Genove's dismissal. There was nothing arbitrary about the proceedings. The petitioners acted quite properly in terminating the private respondent's employment for his unbelievably nauseating act. It is surprising that he should still have the temerity to file his complaint for damages after committing his utterly disgusting offense.

Concerning G.R. No. 76607, we also find that the barbershops subject of the concessions granted by the United States government are commercial enterprises operated by private persons. They are not agencies of the United States Armed Forces nor are their facilities demandable as a matter of right by the American servicemen. These establishments provide for the grooming needs of their customers and offer not only the basic haircut and shave (as required in most military organizations) but such other amenities as shampoo, massage, manicure and other similar indulgences. And all for a fee. Interestingly, one of the concessionaires, private respondent Valencia, was even sent abroad to improve his tonsorial business, presumably for the benefit of his customers . No less significantly, if not more so, all the barbershop concessionaires are, under the terms of their contracts, required to remit to the United States government

fixed commissions in consideration of the exclusive concessions granted to them in their respective areas.

This being the case, the petitioners cannot plead any immunity from the complaint filed by the private respondents in the court below. The contracts in question being decidedly commercial, the conclusion reached in the United States of America vs. Ruiz case cannot be applied here.

The Court would have directly resolved the claims against the defendants as we have done in G.R. No. 79470, except for the paucity of the record in the case at hand. The evidence of the alleged irregularity in the grant of the barbershop concessions is not before us. This means that, as in G.R. No. 80258, the respondent court will have to receive that evidence first, so it can later determine on the basis thereof if the plaintiffs are entitled to the relief they seek. Accordingly, this case must also be remanded to the court below for further proceedings.

IV

There are a number of other cases now pending before us which also involve the question of the immunity of the United States from the jurisdiction of the Philippines. This is cause for regret, indeed, as they mar the traditional friendship between two countries long allied in the cause of democracy. It is hoped that the so-called "irritants" in their relations will be resolved in a spirit of mutual accommodation and respect, without the inconvenience and asperity of litigation and always with justice to both parties.

**WHEREFORE**, after considering all the above premises, the Court hereby renders judgment as follows:

1. In G.R. No. 76607, the petition is **DISMISSED** and the respondent judge is directed to proceed with the hearing and decision of Civil Case No. 4772. The temporary restraining order dated December 11, 1986, is **LIFTED**.

2. In G.R. No. 79470, the petition is **GRANTED** and Civil Case No. 829-R(298) is **DISMISSED**.

3. In G.R. No. 80018, the petition is **GRANTED** and Civil Case No. 115-C-87 is **DISMISSED**. The temporary restraining order dated October 14, 1987, is made permanent.

4. In G.R. No. 80258, the petition is **DISMISSED** and the respondent court is directed to proceed with the hearing and decision of Civil Case No. 4996. The temporary restraining order dated October 27, 1987, is **LIFTED**.

All without any pronouncement as to costs.

**SO ORDERED.**

**Fernan, *C.J.*, Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea and Regalado, *JJ.*, concur.**

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[1] Civil Case No. 4772.
[2] Annex "B", pp. 36-38.
[3] Rollo, p. 88.
[4] Civil Case No. 829-R(298).
[5] Annex "A", Rollo, p. 38.
[6] Civil Case No. 115-C-87.
[7] Annex "A," Rollo, p. 33.
[8] Rollo, p. 69.
[9] Civil Case No. 4996.
[10] Annex "A," Rollo, p. 58.
[11] Rollo, p. 181.
[12] Kawanakoa vs. Polybank, 205 U.S. 349.
[13] De Haber vs. Queen of Portugal, 17 Q.B. 171.
[14] Garcia vs. Chief of Staff, 16 SCRA 120.
[15] 34 Phil. 311.
[16] Santos vs. Santos, 92 Phil. 281; Lyons vs. United States of America, 104 Phil. 593.
[17] Froilan vs. Pan Oriental Shipping Co., G.R. No. 6060, September 30, 1950.
[18] Republic vs. Purisima, 78 SCRA 470.
[19] United States of America vs. Ruiz, 136 SCRA 487.
[20] Lim vs. Brownell, 107 Phil. 345.
[21] 57 SCRA 1.
[22] 136 SCRA 487.

[23] 50 O.G. 1556.
[24] 162 SCRA 88.
[25] Supra.