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[G.R. No. L-49930. August 7, 1985]

FRANCISCO MALONG and ROSALINA AQUINO-MALONG, *petitioners, vs.* **PHILIPPINE NATIONAL RAILWAYS and COURT OF FIRST INSTANCE OF PANGASINAN, Lingayen Branch II,** *respondents.*

SYLLABUS

POLITICAL LAW; STATE; IMMUNITY FROM SUIT; AS A COMMON CARRIER, PHILIPPINE NATIONAL RAILWAYS IS NOT IMMUNE FROM SUIT.— We hold that in the instant case the State divested itself of its sovereign capacity when it organized the PNR which is no different from its predecessor, the Manila Railroad Company. The PNR did not become immune from suit. It did not remove itself from the operation of Articles 1732 to 1766 of the Civil Code on common carriers. It would be unjust if the heirs of the victim of an alleged negligence of the PNR employees could not sue the PNR for damages. Like any private common carrier, the PNR is subject to the obligations of persons engaged in that private enterprise. It is not performing any governmental function.

ABAD SANTOS, *J.*, *concurring*:

POLITICAL LAW; STATE; IMMUNITY FROM SUIT; TEST WHETHER OR NOT AN INSTRUMENTALITY OF THE GOVERNMENT IS IMMUNE FROM SUIT.— The claim that Philippine National Railways is immune from suit because it is an instrumentality of the government is so outlandish that it deserves scant consideration. All corporations organized by the government are its instrumentalities by the very reason of their creation. But that fact alone does not invest them with immunity from suit. The Central Bank of the Philippines which theoretically formulates monetary policies is perhaps the best example of a corporation which is an instrumentality of the government. But the Central Bank is not immune from suit for it also performs proprietary functions. The docket of this Court

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provides proof for this assertion. The test whether or not an instrumentality of the government is immune from suit is well-known.

DECISION

AQUINO, *J.*:

This case is about the immunity from suit of the Philippine National Railways. The Malong spouses alleged in their complaint that on October 30, 1977 their son, Jaime Aquino, a paying passenger, was killed when he fell from a PNR train while it was between Tarlac and Capas.

The tragedy occurred because Jaime had to sit near the door of a coach. The train was overloaded with passengers and baggage in view of the proximity of ALL Saints Day. The Malong spouses prayed that the PNR be ordered to pay them damages totalling ₱136,370.

Upon the Solicitor General's motion, the trial court dismissed the complaint. It ruled that it had no jurisdiction because the PNR, being a *government instrumentality*, the action was a suit against the State (Sec. 16, Art. XV of the Constitution). The Malong spouses appealed to this Court pursuant to Republic Act No. 5440.

The Manila Railroad Company, the PNR's predecessor, as a common carrier, was not immune from suit under Act No. 1510, its charter.

The PNR charter, Republic Act No. 4156, as amended by Republic Act No. 6366 and Presidential Decree No. 741, provides that the PNR is a government instrumentality under government ownership during its 50-year term, 1964 to 2014. It is under the Office of the President of the Philippines. Republic Act No. 6366 provides:

"SECTION 1-a. *Statement of policy.* — The Philippine National Railways, being a factor for socio-economic development and growth, shall be a part of the infrastructure program of the government and

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as such shall remain in and under government ownership during its corporate existence. The Philippine National Railways must be administered with the view of serving the interests of the public by providing them the maximum of service and, while aiming at its greatest utility by the public, the economy of operation must be ensured so that service can be rendered at the minimum passenger and freight prices possible."

The charter also provides:

"SEC. 4. *General powers.* — The Philippine National Railways shall have the following general powers:

(a) To do all such other things and to transact all such business directly or indirectly necessary, incidental or conducive to the attainment of the purpose of the corporation; and

(b) Generally, to exercise all powers of a railroad corporation under the Corporation Law." (This refers to Sections 81 to 102 of the Corporation Law on railroad corporations, not reproduced in the Corporation Code.)

Section 36 of the Corporation Code provides that every corporation has the power to sue and be sued in its corporate name. Section 13(2) of the Corporation Law provides that every corporation has the power to sue and be sued in any court.

"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" (Justice Holmes in *Kawananakoa vs. Polyblank*, 205 U.S. 353, 51 L. ed. 834).

"The public service would be hindered, and public safety endangered, if the supreme authority could be subjected to suit at the instance of every citizen and, consequently, controlled in the use and disposition of the means required for the proper administration of the Government" (*The Siren vs. U.S.*, 7 Wall. 152, 19 L. ed. 129).

Did the State act in a sovereign capacity or in a corporate capacity when it organized the PNR for the purpose of engaging

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in transportation? Did it act differently when it organized the PNR as successor of the Manila Railroad Company?

We hold that in the instant case the State divested itself of its sovereign capacity when it organized the PNR which is no different from its predecessor, the Manila Railroad Company. The PNR did not become immune from suit. It did not remove itself from the operation of Articles 1732 to 1766 of the Civil Code on common carriers.

The correct rule is that "not all government entities, whether corporate or noncorporate, are immune from suits. Immunity from suit is determined by the character of the objects for which the entity was organized. " (*Nat. Airports Corp. vs. Teodoro and Phil. Airlines, Inc.*, 91 Phil. 203, 206; *Santos vs. Santos*, 92 Phil. 281, 285; *Harry Lyons, Inc. vs. USA*, 104 Phil. 593.)

"Suits against State agencies with respect to matters in which they have assumed to act in a private or nongovernmental capacity are not suits against the State" (81 C.J.S. 1319).

"Suits against State agencies with relation to matters in which they have assumed to act in a private or nongovernmental capacity, and various suits against certain corporations created by the State for public purposes, but to engage in matters partaking more of the nature of ordinary business rather than functions of a governmental or political character, are not regarded as suits against the State.

"The latter is true, although the State may own the stock or property of such a corporation, for by engaging in business operations through a corporation the State divests itself so far of its sovereign character, and by implicating consents to suits against the corporation." (81 C.J.S. 1319.)

The foregoing rule was applied to State Dock Commissions carrying on business relating to pilots, terminals and transportation (*Standard Oil Co. of New Jersey vs. U.S.*, 27 Fed. 2nd 370) and to State Highway Commissions created to build public roads and given appropriations in advance to discharge obligations incurred in their behalf (*Arkansas State Highway Commission vs. Dodge*, 26 SW 2nd 879 and *State Highway Commission*

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of Missouri vs. Bates, 296 SW 418, cited in National Airports case).

The point is that when the government enters into a commercial business it abandons its sovereign capacity and is to be treated like any other private corporation (*Bank of the U.S. vs. Planters' Bank*, 9 Wheat. 904, 6 L. ed. 244, cited in *Manila Hotel Employees Association vs. Manila Hotel Company, et al.*, 73 Phil. 374, 388). The Manila Hotel case also relied on the following rulings:

"By engaging in a particular business through 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 of law governing private corporations."

"When the State acts in its proprietary capacity, it is amenable to all the rules of law which bind private individuals."

"There is not one law for the sovereign and another for the subject, but when the sovereign engages in business and the conduct of business enterprises, and contracts with individuals, whenever the contract in any form comes before the courts, the rights and obligation of the contracting parties must be adjusted upon the same principles as if both contracting parties were private persons. Both stand upon equality before the law, and the sovereign is merged in the dealer, contractor and suitor" (*People vs. Stephens*, 71 N.Y. 549).

It should be noted that in *Philippine National Railways vs. Union de Maquinistas, etc.*, L-31948, July 25, 1978, 84 SCRA 223, it was held that the PNR funds could be garnished at the instance of a labor union.

It would be unjust if the heirs of the victim of an alleged negligence of the PNR employees could not sue the PNR for damages. Like any private common carrier, the PNR is subject to the obligations of persons engaged in that private enterprise. It is not performing any governmental function.

Thus, the National Development Company is not immune from suit. It does not exercise sovereign functions. It is an agency for the performance of purely corporate, proprietary

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or business functions (*National Development Company vs. Tobias*, 117 Phil. 703, 705 and cases cited therein; *National Development Company vs. NDC Employees and Workers' Union*, L-32387, August 19, 1975, 66 SCRA 181, 184).

Other government agencies not enjoying immunity from suit are the Social Security System (*Social Security System vs. Court of Appeals*, L-41299, February 21, 1983, 120 SCRA 707) and the Philippine National Bank (*Republic vs. Philippine National Bank*, 121 Phil. 26).

WHEREFORE, the order of dismissal is reversed and set aside. The case is remanded to the trial court for further proceedings. Costs against the Philippine National Railways.

SO ORDERED.

Concepcion Jr., Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, and *Alampay, JJ.*, concur.

Makasiar, C.J., I concur both on express waiver by its charter and implied waiver by the contract of carriage.

Abad Santos, J., see concurring opinion.

Teehankee, J., concurs in the result.

ABAD SANTOS, *J.*, *concurring*:

The claim that Philippine National Railways is immune from suit because it is an instrumentality of the government is so outlandish that it deserves scant consideration. All corporations organized by the government are its instrumentalities by the very reason of their creation. But that fact alone does not invest them with immunity from suit. The Central Bank of the Philippines which theoretically formulates monetary policies is perhaps the best example of a corporation which is an instrumentality of the government. But the Central Bank is not immune from suit for it also performs proprietary functions. The docket of this Court provides proof for this assertion. The test whether or not an instrumentality of the government is immune from suit is well-known.

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I deplore the tendency to invoke immunity from suit on the part of the government corporations. They would deny justice to the people they are to serve. In *Rayo, et al. vs. National Power Corporation, et al.*, G.R. No. 55273-83, Dec. 19, 1981, 110 SCRA 456, the petitioners filed suit against the National Power Corporation for damages as a result of the opening of the floodgates of Angat Dam. The defendant invoked immunity from suit. The trial court sustained the claim and dismissed the suit. This Court in reinstating the case said:

"It is not necessary to write an extended dissertation on whether or not the NPC performs a governmental function with respect to the management and operation of the Angat Dam. It is sufficient to say that the government has organized a private corporation, put money in it and has allowed it to sue and be sued in any court under its charter. (R.A. No. 6395, Sec. 3 (d).) As a government owned and controlled corporation, it has a personality of its own, distinct and separate from that of the Government. (See *National Shipyards and Steel Corp. vs. CIR, et al.*, L-17874, August 31, 1963, 8 SCRA 781.) Moreover, the charter provision that the NPC can 'sue and be sued in any court' is without qualification on the cause of action and accordingly it can include a tort claim such as the one instituted by the petitioners." (At p. 460.)

SECOND DIVISION

[G.R. No. 63048. August 7, 1985]

EMILIO TEJIDO and JOSE TEJIDO, JR., *plaintiffs-appellants, vs.* **JUAN URIARTE ZAMACOMA, *ET AL.*, LUIS CALIBUT, *ET AL.*, ESTATE OF RAFAEL P. GUERRERO, SR., PRUDENCIA HECHANOVA *VDA. DE* ESPARTERO, *ET AL.* NUMERIANO RAMOS, *ET AL.*, VICENTE URIARTE, *ET AL.*, PEDRO BEDAYO, *ET AL.*, ELACIO DEBULGADO, *ET AL.*,** *defendants-appellees.*