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FIRST DIVISION

[G.R. No. L-33777. January 30, 1990]

PACIFIC PRODUCTS, INC., *petitioner, vs.* **VICENTE S. ONG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATE; PUBLIC FUNDS; GARNISHMENT THEREOF, ILLEGAL. — It is noted that the notice of garnishment served upon the Bureau of Telecommunications was made pursuant to an order of attachment issued by the trial court in the case for sum of money against H.D. Labrador. At the time of such service, the amount against which the notice was issued was still in the possession and control of the Bureau. The same situation obtains in the two cases relied upon by the appellate court. While it is true that in the case at bar no salaries of public officials or employees are involved, the reasons for the ruling in the two cited cases are clear. It was held, thus: "x x x By the process of garnishment, the plaintiff virtually sues the garnishee for a debt due to the defendant. The debtor stranger becomes a forced intervenor. The Director of the Bureau of Commerce and Industry, an officer of the Government of the Philippine Islands, when served with the writ of attachment, thus became a party to the action. A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. *Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof.* And still another reason which covers both of the foregoing is that every consideration of public policy forbids it."

2. ID.; STATE; IMMUNITY FROM SUIT; APPLIES WHERE SERVICE BUREAU EXCERCISES GOVERNMENTAL FUNCTION. —

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Petitioner contends that immunity from suit was waived when the Bureau of Telecommunications entered into a business transaction with BML Trading since in this jurisdiction, it is now "a well-established doctrine that when the Government engages in business, it abdicates part of its sovereign prerogatives and ascends to the level of a citizen." This contention is not correct. Suability would follow only if the contract entered into by the government is in the exercise of a proprietary as distinguished from a governmental function. The Bureau of Telecommunications is a service bureau and is not engaged in business. Reliance on the case of *National Shipyards and Steel Corporation vs. CIR, et al.*, G.R. L-17874, August 31, 1963, 8 SCRA, is without merit. NASSCO is a government owned and controlled corporation, with a personality of its own, separate and distinct from that of the government. It has, pursuant to Section 2 of Executive Order No. 356 dated October 23, 1950 (46 Official Gazette, 4677), which established the NASSCO all the powers of a corporation under the Corporation Code. Accordingly, it may sue and be sued and may be subjected to court processes just like any other corporation x x x." On the other hand, the Bureau of Telecommunications is a government agency created under Section 78 of Executive Order No. 94, Series of 1947. It has no charter and no distinct personality of its own. Being a government agency, the doctrine of State immunity from suit applies.

APPEARANCES OF COUNSEL

Bito, Misa & Lozada for petitioner.
Vicente S. Ong for respondent.

D E C I S I O N

MEDIALDEA, *J.*:

This is an appeal by *certiorari* from the decision of the Court of Appeals (p. 46, *Rollo*) in CA-G.R. No. 34038-R entitled "*Vicente S. Ong, Plaintiff-Appellant, versus Macario Ofilada, in his capacity as Sheriff of Manila, The Pacific Products, Inc. and the First Quezon City Insurance Co., Inc., Defendants-*

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Appellees," which reversed the decision (pp. 32-37, Record on Appeal, p. 26, *Rollo*) of the Court of First Instance of Manila in Civil Case No. 53124.

The antecedent facts are as follows:

On February 15, 1963, Vicente Ong filed an action for damages against Macario Ofilada in his capacity as Sheriff of Manila, the Pacific Products, Inc., and the First Quezon City Insurance, with the Court of First Instance of Manila (Branch XIX) and docketed as Civil Case No. 53124. The complaint prayed for damages as a result of defendants' refusal to favorably consider his third party claim filed with the Sheriff of Manila in connection with Civil Case No. 50120, also of the Regional Trial Court of Manila (Branch XVI).

On July 2, 1963, the parties submitted a partial stipulation of facts, quoted herein as follows:

"PARTIAL STIPULATION OF FACTS

"COME NOW parties plaintiff and defendants, by their respective counsel, and to this Honorable Court respectfully submit the following stipulation of facts:

"1. That on April 12, 1962, defendant Pacific Products, Inc. filed Civil Case No. 50120 entitled '*Pacific Products, Inc. vs. H.D. Labrador,*' doing business under the name and style of 'BML Trading and Supply,' with the Court of First Instance of Manila (Branch XIV) for recovery of ₱9,111.70, plus interest, costs and attorney's fees;

"2. That upon motion, the said Branch XIV of this Honorable Court issued an order directing the Sheriff of Manila or any of his deputies to attach, 'the estate, real or personal, of the said defendant H. D. Labrador, etc';

"3. That pursuant to the said order the Sheriff of Manila, through Deputy Sheriff Santiago Geronilla in a notice of garnishment dated October 17, 1962 garnished ₱9,111.70 of the amount of ₱10,500.00 payable to the BML Trading and Supply, the name and style under which the defendant H.D. Labrador in said Civil Case No. 50120 is doing business, by the Bureau of Telecommunications, thereby stopping the payment of the said ₱10,500.00;

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"4. That on December 21, 1962, this Honorable Court (Branch XVI) rendered its decision in Civil Case No. 50120, the dispositive portion of which reads as follows:

> 'WHEREFORE, defendant H.D. Labrador is sentenced to pay plaintiff the sum of ₱9,111.70 with interest thereon at 6% per annum from April 12, 1962 when the complaint was filed and until the decision in this case is fully complied with plus attorney's fees which the Court fixes in the sum of ₱500.00 plus costs.'

"5. That after the above decision became final, a writ of execution was issued, and the Sheriff of Manila, through Deputy Sheriff Santiago Geronilla, further garnished ₱1,181.65 of the ₱10,500.00 mentioned in par. 3 hereof;

"6. That plaintiff in this case, as stated in paragraph 2 of the complaint entered into and executed an AGREEMENT with the BML Trading and Supply on October 6, 1962 (Annex 'A' of the Complaint), but defendant Pacific Products, Inc. first came to know of the same thru counsel on November 8, 1962 and defendant Sheriff of Manila on November 9, 1962, when plaintiff filed a petition to Lift Attachment in Civil Case No. 50120 of the Court of First Instance of Manila, Branch XVI; the Bureau of Telecommunications was notified of the Agreement Annex 'A', on or about November 15, 1962;

"7. That Official Receipt No. 2174 and Official Invoice No. 6491, photostatic copies of which are attached to the complaint as Annexes 'B' and 'C', respectively, were issued on October 8, 1962 when plaintiff paid the sum of ₱9,300.00 to the L & S Chemical Supply of Malabon, Rizal as purchase price of 15,000 pounds of Bluestone copper sulphate pursuant to the AGREEMENT (Annex 'A' of the complaint);

"8. That, as stated in paragraph 4 of the complaint the 15,000 pounds of Bluestone copper sulphate mentioned in the Agreement were duly received on October 8, 1962 by the Bureau of Telecommunications as evidenced by Invoice No. 125, photostatic copy of which was attached to the complaint as Annex 'D';

"9. That pursuant to the AGREEMENT (Annex 'A' of the complaint), the BML Trading and Supply executed on October 19,1962 a Waiver and Assignment of Rights over its share of 40% in the net profit in favor of the plaintiff, photostatic copy of which was attached to the complaint as Annex 'E', but defendant Pacific Products, Inc. first came to know of the same on November 16, 1962 when it was

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served a copy of the plaintiff's Third Party Claim to which a copy of said Waiver and Assignment of Rights was attached, and defendant Sheriff of Manila first came to know of the same when plaintiff filed his said Third Party Claim with the Office of the Sheriff of Manila on November 19, 1962; the Bureau of Telecommunications was *notified* of the Waiver and Assignment of Rights on or about November 15, 1962;

"10. That plaintiff filed his Third Party Claim on November 19, 1962 with the Office of the Sheriff of Manila and the defendant Pacific Products, Inc. filed on November 29, 1962 in Civil Case No. 50120 a Motion to Strike Out Third Party Claim which was denied for lack of merit in an order of this Court, Branch XVI, dated December 21, 1962;

"11. That plaintiff received from the Office of the Sheriff of Manila a notice dated January 22, 1963, simple copy of which is attached hereto as Annex 'A', that defendant Pacific Products, Inc. filed Indemnity Bond No. 3879 of the defendant First Quezon City Insurance Co., and another notice dated April 30, 1963, a simple copy of which is attached hereto as Annex 'B', that defendant Pacific Products, Inc. posted an additional bond of ₱1,181.55, both to answer for the Third Party Claim;

"12. That thereafter, on February 15, 1963 plaintiff filed the instant action;

"13. That after being advised by the Sheriff of Manila in a letter dated April 30, 1963, Annex "B", hereof, to secure an injunction inhibiting him from releasing the money in question in the amount of ₱10,293.35, plaintiff is convinced that defendant Sheriff of Manila is not unjustified and persistent in refusing to satisfy the Third Party Claim of plaintiff;

"14. That the letter of the Bureau of Telecommunications addressed to the Chief Deputy Sheriff of Manila, dated November 5, 1962 and signed by its Acting Director A. Soriano, was in reply to the notice of garnishment dated October 17, 1962, simple copy of which is attached hereto as Annex "C";

"15. That the parties herein admit their respective capacity to sue and be sued.

"WHEREFORE, the parties hereto respectfully submit the foregoing stipulation of facts as part of the evidence in this case without

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prejudice to the presentation of evidence as to matters not covered by this Stipulations of Facts.

"Manila, June 26, 1963.

"MANUEL P. CALANOS & ASSOCIATES

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(Record on Appeal, pp. 26-32)

As aforequoted, Pacific Products, Inc. (Pacific, for brevity) filed an action for sum of money against Hilarion D. Labrador (hereinafter referred to as H.D. Labrador), "doing business under the name and style of BML Trading and Supply," with the Court of First Instance of Manila (Br. XVI) and docketed as Civil Case No. 50102. Upon Motion of Pacific, an order was issued directing the Sheriff of Manila to attach the properties of the defendant.

Meanwhile, BML Trading and Supply (BML Trading, for brevity) won in a bid to supply the Bureau of Telecommunications (Bureau, for brevity) with 15,000 pounds of bluestone copper

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sulfate worth ₱10,500.00. H.D. Labrador, as agent of BML Trading delivered the compound. Before the Bureau could release the payment to BML Trading, the Sheriff of Manila garnished ₱9,111.70 of ₱10,500.00 on October 17, 1962.

Unknown to Pacific, BML Trading, through its attorney-in-fact, H.D. Labrador assigned its rights over the ₱10,500.00 to herein respondent, Vicente S. Ong on October 19, 1962 (pp. 14-17, Record on Appeal; p. 26, *Rollo*). It appears that it was Vicente Ong who advanced the necessary funds to purchase the copper sulfate and the parties agreed that the profits will be shared by BML Trading and Vicente Ong on a 40-60 percent basis. It was also their agreement that BML Trading will waive its share in the net profits which may be realized from the transaction should it fail to secure the release of the payment from the Bureau of Telecommunications within seven (7) days from the delivery of the compound (pp. 9-13, Record on Appeal). Pacific learned about the assignment only when a copy of the third party claim filed by Vicente Ong with the Office of the Sheriff of Manila was served on them on November 19, 1962.

On November 29, 1962, Pacific filed a motion to strike out the third party claim of Vicente Ong, but the same was denied for lack of merit.

H.D. Labrador was declared in default and was ordered to pay Pacific the sum of ₱9,111.70 in a decision which was rendered by the trial court on December 21, 1962, the dispositive portion of which reads:

"WHEREFORE, defendant H.D. Labrador is sentenced to pay plaintiff the sum of ₱9,111.70 with interest thereon at 6% per annum from April 12, 1962 when the complaint was filed and until the decision in this case is fully complied with plus attorney's fees which the Court fixes in the sum of ₱500.000 plus cost." (p. 13, *Rollo*).

The corresponding writ of execution was issued and the Sheriff of Manila further garnished ₱1,181.65 of the ₱10,500.00 in the possession of the Bureau.

Ong's third party claim was frustrated when Pacific filed an Indemnity Bond with the Office of the Sheriff. Thus, the

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action for damages against the Sheriff, Pacific Products and First Quezon City Insurance filed by Ong on February 14, 1963 to vindicate his claim on the amount garnished.

On February 21, 1964, judgment was rendered by the trial court, as follows:

"WHEREFORE, judgment is hereby rendered, dismissing the complaint, without special pronouncement as to costs." (p. 37, Record on Appeal)

Ong filed a notice of appeal on March 20, 1964 (p. 38, Record on Appeal; p. 26, *Rollo*) which was approved on April 25, 1964 (p. 41, Record on Appeal; *supra*).

On May 7, 1971, the Court of Appeals reversed the decision of the trial court. The dispositive portion of the decision reads:

"WHEREFORE, the decision appealed from is reversed and judgment is hereby rendered ordering the defendants, the Pacific Products, Inc., and the First Quezon City Insurance Co., Inc., to pay jointly and severally, the plaintiff-appellant the sum of ten thousand two hundred ninety three pesos and thirty-five centavos (₱10,293.35), with legal interest from November 19, 1962, the date of the filing of the third party claim and the costs.

"SO ORDERED." (p. 24, *Rollo*)

Pacific filed a Motion for Reconsideration which was denied on July 2, 1971 (p. 25, *Rollo*). Hence, the instant appeal by *certiorari* filed by Pacific on July 17, 1971.

Petitioner assails the decision of the Court of Appeals when it held that the garnishment of the amount of ₱10,500.00 payable to BML Trading and Supply while it was still in the possession of the Bureau of Telecommunications was illegal and therefore, null and void. It is also petitioner's contention that the cases of *Director of Commerce and Industry v. Concepcion*, 43 Phil. 384 and *Avendaño, et al. vs. Alikpala, et al.*, G.R. No. L-21189, November 28, 1964, wherein this Court declared null and void the garnishment of the salaries of government employees, relied upon by the appellate court are not applicable because no

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garnishment of salaries of government official or employee is involved in this case.

There is no merit in this petition.

It is noted that the notice of garnishment served upon the Bureau of Telecommunications was made pursuant to an order of attachment issued by the trial court in the case for sum of money against H.D. Labrador. At the time of such service, the amount against which the notice was issued was still in the possession and control of the Bureau. The same situation obtains in the two cases relied upon by the appellate court. While it is true that in the case at bar no salaries of public officials or employees are involved, the reasons for the ruling in the two cited cases are clear. It was held, thus:

"x x x. By the process of garnishment, the plaintiff virtually sues the garnishee for a debt due to the defendant. The debtor stranger becomes a forced intervenor. The Director of the Bureau of Commerce and Industry, an officer of the Government of the Philippine Islands, when served with the writ of attachment, thus became a party to the action. (*Tayabas Land Co. vs. Sharruf* (1921), 41 Phil. 382).

"A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. *Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof.* And still another reason which covers both of the foregoing is that every consideration of public policy forbids it." (*Director of Commerce and Industry v. Concepcion*, 43 Phil. 386; Italics ours)

Against the first reason above-cited, petitioner contends that immunity from suit was waived when the Bureau of Telecommunications entered into a business transaction with BML Trading since in this jurisdiction, it is now "a well-established

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doctrine that when the Government engages in business, it abdicates part of its sovereign prerogatives and ascends to the level of a citizen" (*Price Stabilization Corporation v. Court of Industrial Relations,* G.R. L-9797 and L-9834, November 29, 1957).

This contention is not correct. Suability would follow only if the contract entered into by the government is in the exercise of a proprietary as distinguished from a governmental function (see *U.S.A vs. Ruiz*, L-35645, May 22, 1985). The Bureau of Telecommunications is a service bureau and is not engaged in business. There is also nothing in the records of this case from which it could be concluded that in the purchase of the 15,000 pounds of bluestone copper sulfate, the Bureau was engaging in business.

Likewise, petitioner contends that in this case, where the Bureau is authorized to enter into a contract, the government "may sue and be sued and may be subjected to court processes just like any other person," as was held in the case of *National Shipyards and Steel Corporation (NASSCO) vs. CIR, et al.,* G.R. L-17874, August 31, 1963, 8 SCRA 781.

There is no merit in this contention. NASSCO is a government owned and controlled corporation, with a personality of its own, separate and distinct from that of the government. It has, pursuant to Section 2 of Executive Order No. 356 dated October 23, 1950 (46 Official Gazette, 4677), which established the NASSCO all the powers of a corporation under the Corporation Code. Accordingly, it may sue and be sued and may be subjected to court processes just like any other corporation x x x" (*supra*). On the other hand, the Bureau of Telecommunications is a government agency created under Section 78 of Executive Order No. 94, Series of 1947. It has no charter and no distinct personality of its own. Being a government agency, the doctrine of state immunity from suit applies.

For the foregoing reasons, We affirm the ruling of the appellate court that the writ of garnishment issued against the ₱10,500.00 payable to BML Trading while still in the possession of the Bureau of Telecommunications is illegal and therefore, null and

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void. In view of the assignment and waiver by BML Trading of the said amount in favor of Vicente Ong, the latter became the rightful owner thereof.

Finally, petitioner claims that the Court of Appeals erred in ruling that the money due to BML Trading and Supply in the hands of the Bureau cannot be made to answer for a personal judgment against H.D. Labrador in Civil Case No. 50120. According to petitioner, Vicente Ong admitted in the stipulation of facts that H.D. Labrador was "doing business under the name and style of BML Trading and Supply" and that H.D. Labrador and BML Trading are one. A judgment rendered against H.D. Labrador can therefore be satisfied from the funds the Bureau holds in favor of BML Trading.

We do not agree. There is nothing in the records from which it may be concluded that in the transactions involved in Civil Case 50120, H.D. Labrador acted as an agent of BML Trading. On the contrary, the judgment therein was rendered only against H.D. Labrador. Presumably, it was a personal judgment against him. On the other hand, the ₱10,500.00 in the hands of the Bureau was payable to BML Trading and Supply owned by Benedicta Labrador and represented in the transaction by H.D. Labrador. There is also no evidence on record to support a conclusion that H.D. Labrador held himself out as the owner of BML Trading in his transactions with the Bureau. In the stipulation of facts, Vicente Ong never admitted that H.D. Labrador was doing business under the name and style of BML Trading. What was admitted by Ong was the fact that Civil Case No. 50120 was entitled "*Pacific Products, Inc. vs. H.D. Labrador, doing business under the name and style of BML Trading and Supply.*"

ACCORDINGLY, the petition is *DISMISSED*. The decision of the Court of Appeals appealed from is *AFFIRMED*.

No costs.

SO ORDERED.

Narvasa (Chairman), Cruz, Gancayco, and *Griño-Aquino, JJ.*, concur.