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the subject area, up to the commencement date of the forced lease referred to in the preceding paragraph;

d) The periods to be fixed by the trial Court in its Decision shall be inextendible, and upon failure of the party obliged to tender to the trial Court the amount due to the obligee, the party entitled to such payment shall be entitled to an order of execution for the enforcement of payment of the amount due and for compliance with such other acts as may be required by the prestation due the obligee.

No costs.

SO ORDERED.

Teehankee, Actg. C.J., Plana, Relova, De la Fuente, and *Alampay, JJ.,* concur.

Gutierrez, Jr., J., took no part.

EN BANC

[G.R. No. L-35645. May 22, 1985]

UNITED STATES OF AMERICA, CAPT. JAMES E. GALLOWAY, WILLIAM I. COLLINS and ROBERT GOHIER, *petitioners, vs.* **HON. V.M. RUIZ, Presiding Judge of Branch XV, Court of First Instance of Rizal and ELIGIO DE GUZMAN & CO., INC.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; DOCTRINE OF STATE IMMUNITY; APPLIED RESTRICTIVELY.— The traditional rule of State 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

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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.

2. **ID.; ID.; ID.; WHEN APPLICATION THEREOF DEEMED PROPER, CONTRACTS RELATING TO THE EXERCISE OF SOVEREIGN FUNCTIONS, NOT COVERED.**— It can thus be seen that the statement in respect of the waiver of State immunity from suit was purely gratuitous and, therefore, obiter so that it has no value as an imperative authority. 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.

3. **ID.; ID.; TEST OF APPLICATION.**— That the correct test for the application of State immunity is not the conclusion of a contract by a State but the *legal nature* of the act is shown in *Syquia vs. Lopez*, 84 Phil. 312 (1949). In *Syquia,* the United States concluded contracts with private individuals but the contracts notwithstanding the United State was not deemed to have given or waived its consent to be used for the reason that the contracts were for *jure imperii* and not for *jure gastionis*.

APPEARANCES OF COUNSEL

Sycip, Salazar, Luna & Manalo & Feliciano Law Office for petitioners.

Albert, Vergara, Benares, Perlas & Dominguez Law Office for private respondent.

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DECISION

ABAD SANTOS, *J.*:

This is a petition to review, set aside certain orders and restrain the respondent judge from trying Civil Case No. 779-M of the defunct Court of First Instance of Rizal.

The factual background is as follows:

At times material to this case, the United States of America had a naval base in Subic, Zambales. The base was one of those provided in the Military Bases Agreement between the Philippines and the United States.

Sometime in May, 1972, the United States invited the submission of bids for the following projects:

1. Repair fender system, Alava Wharf at the U.S. Naval Station Subic Bay, Philippines.

2. Repair typhoon damage to NAS Cubi shoreline; repair typhoon damage to shoreline revetment, NAVBASE Subic; and repair to Leyte Wharf approach, NAVBASE Subic Bay, Philippines.

Eligio de Guzman & Co., Inc. responded to the invitation and submitted bids. Subsequent thereto, the company received from the United States two telegrams requesting it to confirm its price proposals and for the name of its bonding company. The company complied with the requests. [In its complaint, the company alleges that the United States had accepted its bids because "A request to confirm a price proposal confirms the acceptance of a bid pursuant to defendant United States' bidding practices." (*Rollo*, p. 30.) The truth of this allegation has not been tested because the case has not reached the trial stage.]

In June, 1972, the company received a letter which was signed by William I. Collins, Director, Contracts Division, Naval Facilities Engineering Command, Southwest Pacific, Department of the Navy of the United States, who is one of the petitioners herein.

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The letter said that the company did not qualify to receive an award for the projects because of its previous unsatisfactory performance rating on a repair contract for the sea wall at the boat landings of the U.S. Naval Station in Subic Bay. The letter further said that the projects had been awarded to third parties.

In the abovementioned Civil Case No. 779-M, the company sued the United States of America and Messrs. James E. Galloway, William I. Collins and Robert Gohier all members of the Engineering Command of the U.S. Navy. The complaint is to order the defendants to allow the plaintiff to perform the work on the projects and, in the event that specific performance was no longer possible, to order the defendants to pay damages. The company also asked for the issuance of a writ of preliminary injunction to restrain the defendants from entering into contracts with third parties for work on the projects.

The defendants entered their special appearance "for the purpose only of questioning the jurisdiction of this court over the subject matter of the complaint and the persons of defendants, the subject matter of the complaint being acts and omissions of the individual defendants as agents of defendant United States of America, a foreign sovereign which has not given her consent to this suit or any other suit for the causes of action asserted in the complaint." (*Rollo*, p. 50.)

Subsequently the defendants filed a motion to dismiss the complaint which included an opposition to the issuance of the writ of preliminary injunction. The company opposed the motion. The trial court denied the motion and issued the writ. The defendants moved twice to reconsider but to no avail. Hence the instant petition which seeks to restrain perpetually the proceedings in Civil Case No. 779-M for lack of jurisdiction on the part of the trial court.

The petition is highly impressed with merit.

The traditional rule of State 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

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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. (See Coquia and Defensor-Santiago, Public International Law, pp. 207-209 [1984].)

The respondent judge recognized the restrictive doctrine of State immunity when he said in his Order denying the defendants' (now petitioners) motion: "A distinction should be made between a strictly governmental function of the sovereign state from its private, proprietary or non-governmental acts." (*Rollo*, p. 20.) However, the respondent judge also said: "It is the Court's considered opinion that entering into a contract for the repair of wharves or shoreline is certainly not a governmental function altho it may partake of a public nature or character. As aptly pointed out by plaintiff's counsel in his reply citing the ruling in the case of Lyons, Inc., [104 Phil. 594 (1958)], and which this Court quotes with approval, *viz.*:

'It is however contended 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 xxx.

'xxx xxx xxx.

'We agree to the above contention, and considering that the United States government, through its agency at Subic Bay, entered into a contract with appellant for stevedoring and miscellaneous labor services within the Subic Bay Area, a U.S. Naval Reservation, it is evident that it can bring an action before our courts for any contractual liability that political entity may assume under the contract. The trial court, therefore, has jurisdiction to entertain this case xxx.'" (*Rollo*, pp. 20-21.)

The reliance placed on *Lyons* by the respondent judge is misplaced for the following reasons:

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In *Harry Lyons, Inc. vs. The United States of America, supra*, plaintiff brought suit in the Court of First Instance of Manila to collect several sums of money on account of a contract between plaintiff and defendant. The defendant filed a motion to dismiss on the ground that the court had no jurisdiction over defendant and over the subject matter of the action. The court granted the motion on the grounds that: (a) it had no jurisdiction over the defendant who did not give its consent to the suit; and (b) plaintiff failed to exhaust the administrative remedies provided in the contract. The order of dismissal was elevated to this Court for review.

In sustaining the action of the lower court, this Court said:

"It appearing in the complaint that appellant has not complied with the procedure laid down in Article XXI of the contract regarding the prosecution of its claim against the United States Government, or, stated differently, it has failed to first exhaust its administrative remedies against said Government, the lower court acted properly in dismissing this case." (At p. 598.)

It can thus be seen that the statement in respect of the waiver of State immunity from suit was purely gratuitous and, therefore, *obiter* so that it has no value as an imperative authority.

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.

That the correct test for the application of State immunity is not the conclusion of a contract by a State but the *legal nature* of the act is shown in *Syquia vs. Lopez*, 84 Phil. 312 (1949).

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In that case the plaintiffs leased three apartment buildings to the United States of America for the use of its military officials. The plaintiffs sued to recover possession of the premises on the ground that the term of the leases had expired. They also asked for increased rentals until the apartments shall have been vacated.

The defendants who were armed forces officers of the United States moved to dismiss the suit for lack of jurisdiction on the part of the court. The Municipal Court of Manila granted the motion to dismiss; sustained by the Court of First Instance, the plaintiffs went to this Court for review on *certiorari*. In denying the petition, this Court said:

"On the basis of the foregoing considerations we are of the belief and we hold that the real party defendant in interest is the Government of the United States of America; that any judgment for back or increased rentals or damages will have to be paid not by defendants Moore and Tillman and their 64 co-defendants but by the said U.S. Government. On the basis of the ruling in the case of *Land vs. Dollar* already cited, and on what we have already stated, the present action must be considered as one against the U.S. Government. 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." (At p. 323.)

In *Syquia*, the United States concluded contracts with private individuals but the contracts notwithstanding the United States was not deemed to have given or waived its consent to be sued for the reason that the contracts were for *jure imperii* and not for *jure gestionis*.

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WHEREFORE, the petition is granted; the questioned orders of the respondent judge are set aside and Civil Case No. 779-M is dismissed. Costs against the private respondent.

SO ORDERED.

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

Fernando, C.J., took no part.

MAKASIAR, *J.*, *dissents*:

The petition should be dismissed and the proceedings in Civil Case No. 779-M in the defunct CFI (now RTC) of Rizal be allowed to continue therein.

In the case of *Lyons vs. the United States of America* (104 Phil. 593), where the contract entered into between the plaintiff (Harry Lyons, Inc.) and the defendant (U.S. Government) involved stevedoring and labor services within the Subic Bay area, this Court further stated that inasmuch as "xxx the United States Government, through its agency at Subic Bay, entered into a contract with appellant for stevedoring and miscellaneous labor services within the Subic Bay area, a U.S. Navy Reservation, it is evident that it can bring an action before our courts for any contractual liability that political entity may assume under the contract."

When the U.S. Government, through its agency at Subic Bay, confirmed the acceptance of a bid of a private company for the repair of wharves or shoreline in the Subic Bay area, it is deemed to have entered into a contract and thus waived the mantle of sovereign immunity from suit and descended to the level of the ordinary citizen. Its consent to be sued, therefore, is implied from its act of entering into a contract (*Santos vs. Santos*, 92 Phil. 281, 284).

Justice and fairness dictate that a foreign government that commits a breach of its contractual obligation — in the case at bar by the unilateral cancellation of the award for the project

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by the United States government, through its agency at Subic Bay — should not be allowed to take undue advantage of a party who may have legitimate claims against it by seeking refuge behind the shield of non-suability. A contrary view would render a Filipino citizen, as in the instant case, helpless and without redress in his own country for violation of his rights committed by the agents of the foreign government professing to act in its name.

Appropriate are the words of Justice Perfecto in his dissenting opinion in *Syquia vs. Almeda Lopez*, 84 Phil. 312, 325:

"Although, generally, foreign governments are beyond the jurisdiction of domestic courts of justice, such rule is inapplicable to cases in which the foreign government enters into private contracts with the citizens of the court's jurisdiction. A contrary view would simply run against all principles of decency and violative of all tenets of morals.

"Moral principles and principles of justice are as valid and applicable as well with regard to private individuals as with regard to governments either domestic or foreign. Once a foreign government enters into a private contract with the private citizens of another country, such foreign government cannot shield its non-performance or contravention of the terms of the contract under the cloak of non-jurisdiction. To place such foreign government beyond the jurisdiction of the domestic courts is to give approval to the execution of unilateral contracts, graphically described in Spanish as '*contratos leoninos*,' because one party gets the lion's share to the detriment of the other. To give validity to such contract is to sanctify bad faith, deceit, fraud. We prefer to adhere to the thesis that all parties in a private contract, including governments and the most powerful of them, are amenable to law, and that such contracts are enforceable through the help of the courts of justice with jurisdiction to take cognizance of any violation of such contracts if the same had been entered into only by private individuals."

Constant resort by a foreign state or its agents to the doctrine of State immunity in this jurisdiction impinges unduly upon our sovereignty and dignity as a nation. Its application will particularly discourage Filipino or domestic contractors from transacting business and entering into contracts with United States authorities

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or facilities in the Philippines — whether naval, air or ground forces — because the difficulty, if not impossibility, of enforcing a validly executed contract and of seeking judicial remedy in our own courts for breaches of contractual obligation committed by agents of the United States government, always looms large, thereby hampering the growth of Filipino enterprises and creating a virtual monopoly in our own country by United States contractors of contracts for services or supplies with the various U.S. offices and agencies operating in the Philippines.

The sanctity of upholding agreements freely entered into by the parties cannot be over emphasized. Whether the parties are nations or private individuals, it is to be reasonably assumed and expected that the undertakings in the contract *will be complied with in good faith.*

One glaring fact of modern day civilization is that a big and powerful nation, like the United States of America, can always overwhelm small and weak nations. The declaration in the United Nations Charter that its member states are equal and sovereign, becomes hollow and meaningless because big nations wielding economic and military superiority impose upon and dictate to small nations, subverting their sovereignty and dignity as nations. Thus, more often than not, when U.S. interest clashes with the interest of small nations, the American governmental agencies or its citizens invoke principles of international law for their own benefit.

In the case at bar, the efficacy of the contract between the U.S. Naval authorities at Subic Bay on one hand, and herein private respondent on the other, was honored more in the breach than in the compliance. The opinion of the majority will certainly open the floodgates of more violations of contractual obligations. American authorities or any foreign government in the Philippines for that matter, dealing with the citizens of this country, can conveniently seek protective cover under the majority opinion. The result is disastrous to the Philippines.

This opinion of the majority manifests a neo-colonial mentality. It fosters economic imperialism and foreign political ascendancy in our Republic.

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The doctrine of government immunity from suit cannot and should not serve as an instrument for perpetrating an injustice on a citizen (*Amigable vs. Cuenca*, L-26400, February 29, 1972, 43 SCRA 360; *Ministerio vs. Court of First Instance*, L-31635, August 31, 1971, 40 SCRA 464).

Under the doctrine of implied waiver of its non-suability, the United States government, through its naval authorities at Subic Bay, should be held amenable to lawsuits in our country like any other juristic person.

The invocation by the petitioner United States of America is not in accord with paragraph 3 of Article III of the original RP-US Military Bases Agreement of March 14, 1947, which states that "in the exercise of the above-mentioned rights, powers and authority, *the United States agrees that the powers granted to it will not be used unreasonably* xxx" (italics supplied).

Nor is such posture of the petitioners herein in harmony with the amendment dated May 27, 1968 to the aforesaid RP-US Military Bases Agreement, which recognizes "the need to promote and maintain sound employment practices which will assure equality of treatment of all employees xxx and continuing favorable employer-employee relations xxx" and "(B)elieving that an agreement will be mutually beneficial and will strengthen the democratic institutions cherished by both Governments, xxx the United States Government agrees to accord preferential employment of Filipino citizens in the Bases, thus (1) the U.S. Forces in the Philippines shall fill the needs for civilian employment by employing Filipino citizens, *etc.*" (Par. 1, Art. I of the Amendment of May 27, 1968).

Neither does the invocation by petitioners of state immunity from suit express fidelity to paragraph 1 of Article IV of the aforesaid amendment of May 27, 1968 which directs that "contractors and concessionaires performing work for the U.S. Armed Forces *shall be required* by their contract or concession agreements *to comply with all applicable Philippine labor laws and regulations*," even though paragraph 2 thereof affirms that "nothing in this Agreement shall imply any waiver by either of the two Governments of such immunity under international law."

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Reliance by petitioners on the non-suability of the United States Government before the local courts, actually clashes with No. III on respect for Philippine law of the Memorandum of Agreement signed on January 7, 1979, also amending RP-US Military Bases Agreement, which stresses that "*it is the duty of members of the United States Forces, the civilian component and their dependents, to respect the laws of the Republic of the Philippines and to abstain from any activity inconsistent with the spirit of the Military Bases Agreement* and, in particular, *from any political activity in the Philippines*. The United States shall take all measures within its authority to insure that they adhere to them" (italics supplied).

The foregoing duty imposed by the amendment to the Agreement is further emphasized by No. IV on the economic and social improvement of areas surrounding the bases, which directs that "moreover, *the United States Forces shall procure goods and services in the Philippines to the maximum extent feasible*" (italics supplied).

Under No. VI on labor and taxation of the said amendment of January 6, 1979 in connection with the discussions on possible revisions or alterations of the Agreement of May 27, 1968, "*the discussions shall be conducted on the basis of the principles of equality of treatment, the right to organize, and bargain collectively, and respect for the sovereignty of the Republic of the Philippines*" (italics supplied).

The majority opinion seems to mock the provision of paragraph 1 of the joint statement of President Marcos and Vice-President Mondale of the United States dated May 4, 1978 that "*the United States re-affirms that Philippine sovereignty extends over the bases and that Its base shall be under the command of a Philippine Base Commander*," which is supposed to underscore the joint Communique of President Marcos and U.S. President Ford of December 7, 1975, under which "*they affirm that sovereign equality, territorial integrity and political independence of all States are fundamental principles which both countries scrupulously respect; and that "they confirm that mutual respect for the dignity of each nation shall*

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characterize their friendship as well as the alliance between their two countries."

The majority opinion negates the statement on the delineation of the powers, duties and responsibilities of both the Philippine and American Base Commanders that "in the performance of their duties, the Philippine Base Commander and the American Base Commander shall be guided by *full respect for Philippine sovereignty* on the one hand and the assurance of unhampered U.S. military operations on the other hand"; and that "*they shall promote cooperation, understanding and harmonious relations within the Base and with the general public* in the proximate vicinity thereof" (par. 2 & par. 3 of the Annex covered by the exchange of notes, January 7, 1979, between Ambassador Richard W. Murphy and Minister of Foreign Affairs Carlos P. Romulo, italics supplied).

EN BANC

[G.R. No. L-40118. May 22, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **IGNACIO PANUELOS *y* ZIGA, DAVID PANUELOS *y* ZIGA, ISIDRO PANUELOS *y* ZIGA, RODOLFO PANUELOS *y* RAMOS, and FRANCISCO PANUELOS,** *accused,* **IGNACIO PANUELOS *y* ZIGA and RODOLFO PANUELOS *y* RAMOS,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT, UPHELD; PROOF OF IMPROPER MOTIVE, NOT SHOWN.**— There is no reason to doubt the findings and conclusion of the trial court relative to the credibility of prosecution witnesses, namely: Candido Taghoy, Jose Candelaria and Mariano Romero, all of whom testified that