

## SECOND DIVISION

[ G.R. No. 182358, February 20, 2013 ]

**THE SECRETARY OF HEALTH, AND MA. MARGARITA M. GALON,  
PETITIONERS, VS. PHIL PHARMAWEALTH, INC., RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

The state may not be sued without its consent. Likewise, public officials may not be sued for acts done in the performance of their official functions or within the scope of their authority.

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the October 25, 2007 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 85670, and its March 31, 2008 Resolution<sup>[3]</sup> denying petitioners' Motion for Reconsideration.<sup>[4]</sup>

#### ***Factual Antecedents***

On December 22, 1998, Administrative Order (AO) No. 27 series of 1998<sup>[5]</sup> was issued by then Department of Health (DOH) Secretary Alfredo G. Romualdez (Romualdez). AO 27 set the guidelines and procedure for accreditation of government suppliers of pharmaceutical products for sale or distribution to the public, such accreditation to be valid for three years but subject to annual review.

On January 25, 2000, Secretary Romualdez issued AO 10 series of 2000<sup>[6]</sup> which amended AO 27. Under Section VII<sup>[7]</sup> of AO 10, the accreditation period for government suppliers of pharmaceutical products was reduced to two years. Moreover, such accreditation may be recalled, suspended or revoked after due deliberation and proper notice by the DOH Accreditation Committee, through its Chairman.

Section VII of AO 10 was later amended by AO 66 series of 2000,<sup>[8]</sup> which provided that the two-year accreditation period may be recalled, suspended or revoked only after due deliberation, *hearing* and notice by the DOH Accreditation Committee, through its Chairman.

On August 28, 2000, the DOH issued Memorandum No. 171-C<sup>[9]</sup> which provided for a list and category of sanctions to be imposed on accredited government suppliers of pharmaceutical products in case of adverse findings regarding their products (e.g. substandard, fake, or misbranded) or violations committed by them during their accreditation.

In line with Memorandum No. 171-C, the DOH, through former Undersecretary Ma. Margarita M. Galon (Galon), issued Memorandum No. 209 series of 2000,<sup>[10]</sup>

inviting representatives of 24 accredited drug companies, including herein respondent Phil Pharmawealth, Inc. (PPI) to a meeting on October 27, 2000. During the meeting, Undersecretary Galon handed them copies of a document entitled "Report on Violative Products"<sup>[11]</sup> issued by the Bureau of Food and Drugs<sup>[12]</sup> (BFAD), which detailed violations or adverse findings relative to these accredited drug companies' products. Specifically, the BFAD found that PPI's products which were being sold to the public were unfit for human consumption.

During the October 27, 2000 meeting, the 24 drug companies were directed to submit within 10 days, or until November 6, 2000, their respective explanations on the adverse findings covering their respective products contained in the Report on Violative Products.

Instead of submitting its written explanation within the 10-day period as required, PPI belatedly sent a letter<sup>[13]</sup> dated November 13, 2000 addressed to Undersecretary Galon, informing her that PPI has referred the Report on Violative Products to its lawyers with instructions to prepare the corresponding reply. However, PPI did not indicate when its reply would be submitted; nor did it seek an extension of the 10-day period, which had previously expired on November 6, 2000, much less offer any explanation for its failure to timely submit its reply. PPI's November 13, 2000 letter states:

Madam,

This refers to your directive on 27 October 2000, on the occasion of the meeting with selected accredited suppliers, during which you made known to the attendees of your requirement for them to submit their individual comments on the Report on Violative Products (the "Report") compiled by your office and disseminated on that date.

In this connection, we inform you that we have already instructed our lawyers to prepare on our behalf the appropriate reply to the Report furnished to us. Our lawyers in time shall revert to you and furnish you the said reply.

Please be guided accordingly.

Very truly yours,

(signed)

ATTY. ALAN A.B. ALAMBRA

Vice-President for Legal and Administrative Affairs<sup>[14]</sup>

In a letter-reply<sup>[15]</sup> dated November 23, 2000 Undersecretary Galon found "untenable" PPI's November 13, 2000 letter and therein informed PPI that, effective immediately, its accreditation has been suspended for two years pursuant to AO 10 and Memorandum No. 171-C.

In another December 14, 2000 letter<sup>[16]</sup> addressed to Undersecretary Galon, PPI

through counsel questioned the suspension of its accreditation, saying that the same was made pursuant to Section VII of AO 10 which it claimed was patently illegal and null and void because it arrogated unto the DOH Accreditation Committee powers and functions which were granted to the BFAD under Republic Act (RA) No. 3720<sup>[17]</sup> and Executive Order (EO) No. 175.<sup>[18]</sup> PPI added that its accreditation was suspended without the benefit of notice and hearing, in violation of its right to substantive and administrative due process. It thus demanded that the DOH desist from implementing the suspension of its accreditation, under pain of legal redress.

On December 28, 2000, PPI filed before the Regional Trial Court of Pasig City a Complaint<sup>[19]</sup> seeking to declare null and void certain DOH administrative issuances, with prayer for damages and injunction against the DOH, former Secretary Romualdez and DOH Undersecretary Galon. Docketed as Civil Case No. 68200, the case was raffled to Branch 160. On February 8, 2002, PPI filed an Amended and Supplemental Complaint,<sup>[20]</sup> this time impleading DOH Secretary Manuel Dayrit (Dayrit). PPI claimed that AO 10, Memorandum No. 171-C, Undersecretary Galon's suspension order contained in her November 23, 2000 letter, and AO 14 series of 2001<sup>[21]</sup> are null and void for being in contravention of Section 26(d) of RA 3720 as amended by EO 175, which states as follows:

SEC. 26. x x x

(d) When it appears to the Director [of the BFAD] that the report of the Bureau that any article of food or any drug, device, or cosmetic secured pursuant to Section twenty-eight of this Act is adulterated, misbranded, or not registered, he shall cause notice thereof to be given to the person or persons concerned and such person or persons shall be given an opportunity to be heard before the Bureau and to submit evidence impeaching the correctness of the finding or charge in question.

For what it claims was an undue suspension of its accreditation, PPI prayed that AO 10, Memorandum No. 171-C, Undersecretary Galon's suspension order contained in her November 23, 2000 letter, and AO 14 be declared null and void, and that it be awarded moral damages of P5 million, exemplary damages of P1 million, attorney's fees of P1 million, and costs of suit. PPI likewise prayed for the issuance of temporary and permanent injunctive relief.

In their Amended Answer,<sup>[22]</sup> the DOH, former Secretary Romualdez, then Secretary Dayrit, and Undersecretary Galon sought the dismissal of the Complaint, stressing that PPI's accreditation was suspended because most of the drugs it was importing and distributing/selling to the public were found by the BFAD to be substandard for human consumption. They added that the DOH is primarily responsible for the formulation, planning, implementation, and coordination of policies and programs in the field of health; it is vested with the comprehensive power to make essential health services and goods available to the people, including accreditation of drug suppliers and regulation of importation and distribution of basic medicines for the public.

Petitioners added that, contrary to PPI's claim, it was given the opportunity to

present its side within the 10-day period or until November 6, 2000, but it failed to submit the required comment/reply. Instead, it belatedly submitted a November 13, 2000 letter which did not even constitute a reply, as it merely informed petitioners that the matter had been referred by PPI to its lawyer. Petitioners argued that due process was afforded PPI, but because it did not timely avail of the opportunity to explain its side, the DOH had to act immediately – by suspending PPI’s accreditation – to stop the distribution and sale of substandard drug products which posed a serious health risk to the public. By exercising DOH’s mandate to promote health, it cannot be said that petitioners committed grave abuse of discretion.

In a January 8, 2001 Order,<sup>[23]</sup> the trial court partially granted PPI’s prayer for a temporary restraining order, but only covering PPI’s products which were not included in the list of violative products or drugs as found by the BFAD.

In a Manifestation and Motion<sup>[24]</sup> dated July 8, 2003, petitioners moved for the dismissal of Civil Case No. 68200, claiming that the case was one against the State; that the Complaint was improperly verified; and lack of authority of the corporate officer to commence the suit, as the requisite resolution of PPI’s board of directors granting to the commencing officer – PPI’s Vice President for Legal and Administrative Affairs, Alan Alambra, – the authority to file Civil Case No. 68200 was lacking. To this, PPI filed its Comment/Opposition.<sup>[25]</sup>

### ***Ruling of the Regional Trial Court***

In a June 14, 2004 Order,<sup>[26]</sup> the trial court dismissed Civil Case No. 68200, declaring the case to be one instituted against the State, in which case the principle of state immunity from suit is applicable.

PPI moved for reconsideration,<sup>[27]</sup> but the trial court remained steadfast.<sup>[28]</sup> PPI appealed to the CA.

### ***Ruling of the Court of Appeals***

Docketed as CA-G.R. CV No. 85670, PPI’s appeal centered on the issue of whether it was proper for the trial court to dismiss Civil Case No. 68200.

The CA, in the herein assailed Decision,<sup>[29]</sup> reversed the trial court ruling and ordered the remand of the case for the conduct of further proceedings. The CA concluded that it was premature for the trial court to have dismissed the Complaint. Examining the Complaint, the CA found that a cause of action was sufficiently alleged – that due to defendants’ (petitioners’) acts which were beyond the scope of their authority, PPI’s accreditation as a government supplier of pharmaceutical products was suspended without the required notice and hearing as required by Section 26(d) of RA 3720 as amended by EO 175. Moreover, the CA held that by filing a motion to dismiss, petitioners were deemed to have hypothetically admitted the allegations in the Complaint – which state that petitioners were being sued in their individual and personal capacities – thus negating their claim that Civil Case No. 68200 is an unauthorized suit against the State.

The CA further held that instead of dismissing the case, the trial court should have deferred the hearing and resolution of the motion to dismiss and proceeded to trial.

It added that it was apparent from the Complaint that petitioners were being sued in their private and personal capacities for acts done beyond the scope of their official functions. Thus, the issue of whether the suit is against the State could best be threshed out during trial on the merits, rather than in proceedings covering a motion to dismiss.

The dispositive portion of the CA Decision reads:

**WHEREFORE**, the appeal is hereby **GRANTED**. The Order dated June 14, 2004 of the Regional Trial Court of Pasig City, Branch 160, is hereby **REVERSED** and **SET-ASIDE**. **ACCORDINGLY**, this case is REMANDED to the trial court for further proceedings.

**SO ORDERED.**<sup>[30]</sup>

Petitioners sought, but failed, to obtain a reconsideration of the Decision. Hence, they filed the present Petition.

### **Issue**

Petitioners now raise the following lone issue for the Court's resolution:

Should Civil Case No. 68200 be dismissed for being a suit against the State?<sup>[31]</sup>

### ***Petitioners' Arguments***

Petitioners submit that because PPI's Complaint prays for the award of damages against the DOH, Civil Case No. 68200 should be considered a suit against the State, for it would require the appropriation of the needed amount to satisfy PPI's claim, should it win the case. Since the State did not give its consent to be sued, Civil Case No. 68200 must be dismissed. They add that in issuing and implementing the questioned issuances, individual petitioners acted officially and within their authority, for which reason they should not be held to account individually.

### ***Respondent's Arguments***

Apart from echoing the pronouncement of the CA, respondent insists that Civil Case No. 68200 is a suit against the petitioners in their personal capacity for acts committed outside the scope of their authority.

### **Our Ruling**

The Petition is granted.

### ***The doctrine of non-suability.***

The discussion of this Court in *Department of Agriculture v. National Labor Relations Commission*<sup>[32]</sup> on the doctrine of non-suability is enlightening.