

SECOND DIVISION

[G.R. No. 155504, June 26, 2009]

**PROFESSIONAL VIDEO, INC., PETITIONER, VS. TECHNICAL
EDUCATION AND SKILLS DEVELOPMENT AUTHORITY,
RESPONDENT.**

D E C I S I O N

BRION, J.:

We resolve the petition filed by Professional Video, Inc. (*PROVI*)^[1] to annul and set aside the Decision^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 67599, and its subsequent Order denying PROVI's motion for reconsideration.^[3] The assailed CA decision nullified:

- a. the Order^[4] dated July 16, 2001 of the Regional Trial Court (RTC), Pasig City, in Civil Case No. 68527, directing the attachment/garnishment of the properties of respondent Technical Education and Skills Development Authority (*TESDA*) amounting to Thirty Five Million Pesos (P35,000,000.00); and
- b. the RTC's August 24, 2001 Order^[5] denying respondent TESDA's motion to discharge/quash writ of attachment.

THE FACTUAL BACKGROUND

PROVI is an entity engaged in the sale of high technology equipment, information technology products and broadcast devices, including the supply of plastic card printing and security facilities.

TESDA is an instrumentality of the government established under Republic Act (*R.A.*) No. 7796 (the TESDA Act of 1994) and attached to the Department of Labor and Employment (*DOLE*) to "develop and establish a national system of skills standardization, testing, and certification in the country."^[6] To fulfill this mandate, it sought to issue security-printed certification and/or identification polyvinyl (*PVC*) cards to trainees who have passed the certification process.

TESDA's Pre-Qualification Bids Award Committee (*PBAC*) conducted two (2) public biddings on June 25, 1999 and July 22, 1999 for the printing and encoding of PVC cards. A failure of bidding resulted in both instances since only two (2) bidders - PROVI and Sirex Phils. Corp. - submitted proposals.

Due to the failed bidding, the PBAC recommended that TESDA enter into a negotiated contract with PROVI. On December 29, 1999, TESDA and PROVI signed and executed their "Contract Agreement Project: PVC ID Card Issuance" (*the Contract Agreement*) for the provision of goods and services in the printing and

encoding of PVC cards.^[7] Under this Contract Agreement, PROVI was to provide TESDA with the system and equipment compliant with the specifications defined in the Technical Proposal. In return, TESDA would pay PROVI the amount of Thirty-Nine Million Four Hundred and Seventy-Five Thousand Pesos (P39,475,000) within fifteen (15) days after TESDA's acceptance of the contracted goods and services.

On August 24, 2000, TESDA and PROVI executed an "Addendum to the Contract Agreement Project: PVC ID Card Issuance" (*Addendum*),^[8] whose terms bound PROVI to deliver one hundred percent (100%) of the enumerated supplies to TESDA consisting of five hundred thousand (500,000) pieces of security foil; five (5) pieces of security die with TESDA seal; five hundred thousand (500,000) pieces of pre-printed and customized identification cards; one hundred thousand (100,000) pieces of scannable answer sheets; and five hundred thousand (500,000) customized TESDA holographic laminate. In addition, PROVI would install and maintain the following equipment: one (1) unit of Micropoise, two (2) units of card printer, three (3) units of flatbed scanner, one (1) unit of OMR scanner, one (1) unit of Server, and seven (7) units of personal computer.

TESDA in turn undertook to pay PROVI thirty percent (30%) of the total cost of the supplies within thirty (30) days after receipt and acceptance of the contracted supplies, with the balance payable within thirty (30) days after the initial payment.

According to PROVI, it delivered the following items to TESDA on the dates indicated:

Date	Particulars	Amount
26 April 2000	48,500 pre-printed cards	P 2,764,500.00
07 June 2000	330,000 pre-printed cards	18,810,000.00
07 August 2000	121,500 pre-printed cards	6,925,500.00
26 April 2000	100,000 scannable answer sheets	600,000.00
06 June 2000	5 Micro-Poise customized die	375,000.00
13 June 2000	35 boxes @ 15,000 imp/box	10,000,000.00
	Custom hologram Foil	
	Total	P 39,475,000.00

PROVI further alleged that out of TESDA's liability of P39,475,000.00, TESDA paid PROVI only P3,739,500.00, leaving an outstanding balance of P35,735,500.00, as evidenced by PROVI's Statement of Account.^[9] Despite the two demand letters dated March 8 and April 27, 2001 that PROVI sent TESDA,^[10] the outstanding balance remained unpaid.

On July 11, 2001, PROVI filed with the RTC a complaint for sum of money with damages against TESDA. PROVI additionally prayed for the issuance of a writ of preliminary attachment/garnishment against TESDA. The case was docketed as Civil Case No. 68527. In an Order dated July 16, 2001, the RTC granted PROVI's prayer and issued a writ of preliminary attachment against the properties of TESDA not exempt from execution in the amount of P35,000,000.00.^[11]

TESDA responded on July 24, 2001 by filing a Motion to Discharge/Quash the Writ of Attachment, arguing mainly that public funds cannot be the subject of garnishment. [12] The RTC denied TESDA's motion, and subsequently ordered the manager of the Land Bank of the Philippines to produce TESDA's bank statement for the garnishment of the covered amount. [13]

Faced with these rulings, TESDA filed a Petition for *Certiorari* with the CA to question the RTC orders, imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the trial court for issuing a writ of preliminary attachment against TESDA's public funds. [14]

The CA set aside the RTC's orders after finding that: (a) TESDA's funds are public in nature and, therefore, exempt from garnishment; and (b) TESDA's purchase of the PVC cards was a necessary incident of its governmental function; consequently, it ruled that there was no legal basis for the issuance of a writ of preliminary attachment/garnishment. [15] The CA subsequently denied PROVI's motion for reconsideration; [16] hence, the present petition.

THE PETITION

The petition submits to this Court the single issue of whether or not the writ of attachment against TESDA and its funds, to cover PROVI's claim against TESDA, is valid. The issue involves a pure question of law and requires us to determine whether the CA was correct in ruling that the RTC gravely abused its discretion in issuing a writ of attachment against TESDA.

PROVI argues that the CA should have dismissed TESDA's petition for *certiorari* as the RTC did not commit any grave abuse of discretion when it issued the Orders dated July 16, 2001 and August 24, 2001. According to PROVI, the RTC correctly found that when TESDA entered into a purely commercial contract with PROVI, TESDA went to the level of an ordinary private citizen and could no longer use the defense of state immunity from suit. PROVI further contends that it has alleged sufficient ultimate facts in the affidavit it submitted to support its application for a writ of preliminary attachment. Lastly, PROVI maintains that sufficient basis existed for the RTC's grant of the writ of preliminary attachment, since TESDA fraudulently misapplied or embezzled the money earmarked for the payment of the contracted supplies and services, as evidenced by the Certification as to Availability of Funds.

TESDA claims that it entered the Contract Agreement and Addendum in the performance of its governmental function to develop and establish a national system of skills standardization, testing, and certification; in the performance of this governmental function, TESDA is immune from suit. Even assuming that it had impliedly consented to be sued by entering into a contract with PROVI, TESDA posits that the RTC still did not have the power to garnish or attach its funds since these are public funds. Lastly, TESDA points out that PROVI failed to comply with the elements for the valid issuance of a writ of preliminary attachment, as set forth in Section 1, Rule 57 of the 1997 Rules of Civil Procedure.

THE COURT'S RULING

We find, as the CA did, that the RTC's questioned order involved a gross misreading of the law and jurisprudence amounting to action in excess of its jurisdiction. Hence, we resolve to DENY PROVI's petition for lack of merit.

TESDA is an instrumentality of the government undertaking governmental functions.

R.A. No. 7796 created the *Technical Education and Skills Development Authority* or TESDA under the declared "policy of the State to provide relevant, accessible, high quality and efficient technical education and skills development in support of the development of high quality Filipino middle-level manpower responsive to and in accordance with Philippine development goals and priorities."^[17] TESDA replaced and absorbed the National Manpower and Youth Council, the Bureau of Technical and Vocational Education and the personnel and functions pertaining to technical-vocational education in the regional offices of the Department of Education, Culture and Sports and the apprenticeship program of the Bureau of Local Employment of the DOLE.^[18] Thus, TESDA is an unincorporated instrumentality of the government operating under its own charter.

Among others, TESDA is empowered to: approve trade skills standards and trade tests as established and conducted by private industries; establish and administer a system of accreditation of both public and private institutions; establish, develop and support the institutions' trainers' training and/or programs; exact reasonable fees and charges for such tests and trainings conducted, and retain such earnings for its own use, subject to guidelines promulgated by the Authority; and perform such other duties and functions necessary to carry out the provisions of the Act, consistent with the purposes of the creation of TESDA.^[19]

Within TESDA's structure, as provided by R.A. No. 7769, is a Skills Standards and Certification Office expressly tasked, among others, to develop and establish a national system of skills standardization, testing and certification in the country; and to conduct research and development on various occupational areas in order to recommend policies, rules and regulations for effective and efficient skills standardization, testing and certification system in the country.^[20] The law likewise mandates that "[T]here shall be national occupational skills standards to be established by TESDA-accredited industry committees. The TESDA shall develop and implement a certification and accreditation program in which private groups and trade associations are accredited to conduct approved trade tests, and the local government units to promote such trade testing activities in their respective areas in accordance with the guidelines to be set by the TESDA. The Secretary of Labor and Employment shall determine the occupational trades for mandatory certification. *All certificates relating to the national trade skills testing and certification system shall be issued by the TESDA through its Secretariat.*"^[21]

All these measures are undertaken pursuant to the constitutional command that "[T]he State affirms labor as a primary social economic force," and shall "protect the rights of workers and promote their welfare";^[22] that "[T]he State shall protect and promote the right of all citizens to quality education at all levels, and shall take

appropriate steps to make such education accessible to all";^[23] in order "to afford protection to labor" and "promote full employment and equality of employment opportunities for all."^[24]

Under these terms, both constitutional and statutory, we do not believe that the role and status of TESDA can seriously be contested: it is an unincorporated instrumentality of the government, directly attached to the DOLE through the participation of the Secretary of Labor as its Chairman, for the performance of governmental functions - *i.e.*, the handling of formal and non-formal education and training, and skills development. As an unincorporated instrumentality operating under a specific charter, it is equipped with both express and implied powers,^[25] and all State immunities fully apply to it.^[26]

TESDA, as an agency of the State, cannot be sued without its consent.

The rule that a state may not be sued without its consent is embodied in Section 3, Article XVI of the 1987 Constitution and has been an established principle that antedates this Constitution.^[27] It is as well a universally recognized principle of international law that exempts a state and its organs from the jurisdiction of another state.^[28] The principle is based on the very essence of sovereignty, and on the practical ground that there can be no legal right as against the authority that makes the law on which the right depends.^[29] It also rests on reasons of public policy -- that public service would be hindered, and the public endangered, if the sovereign authority could be subjected to law suits at the instance of every citizen and, consequently, controlled in the uses and dispositions of the means required for the proper administration of the government.^[30]

The proscribed suit that the state immunity principle covers takes on various forms, namely: a suit against the Republic by name; a suit against an unincorporated government agency; a suit against a government agency covered by a charter with respect to the agency's performance of governmental functions; and a suit that on its face is against a government officer, but where the ultimate liability will fall on the government. In the present case, the writ of attachment was issued against a government agency covered by its own charter. As discussed above, TESDA performs governmental functions, and the issuance of certifications is a task within its function of developing and establishing a system of skills standardization, testing, and certification in the country. From the perspective of this function, the core reason for the existence of state immunity applies - *i.e.*, the public policy reason that the performance of governmental function cannot be hindered or delayed by suits, nor can these suits control the use and disposition of the means for the performance of governmental functions. In *Providence Washington Insurance Co. v. Republic of the Philippines*,^[31] we said:

[A] continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well known propensity on the part of our people to go to court, at the least provocation, the loss of