

## THIRD DIVISION

[ G.R. NO. 142362, May 03, 2006 ]

**PHILIPPINE AGILA SATELLITE INC. AND MICHAEL C. U. DE  
GUZMAN, COMPLAINANTS, VS. JOSEFINA TRINIDAD-LICHAUCO  
UNDERSECRETARY FOR COMMUNICATIONS, DEPARTMENT OF  
TRANSPORTATION AND COMMUNICATION (DOTC),  
RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

This Petition for Review on Certiorari seeks the reversal of the Decision<sup>[1]</sup> dated 21 February 2000 of the Court of Appeals in C.A. G.R. No. SP 49422. The assailed Decision authorized the dismissal of a civil complaint against respondent Josefina Trinidad-Lichauco (Lichauco), former Undersecretary for Communications of the Department of Transportation and Communication (DOTC), on the premise that the complaint constituted a suit against the State.

A brief rundown of the relevant facts is in order.

Petitioner Philippine Agila Satellite Inc. (PASI) is a duly organized corporation, whose President and Chief Executive Officer is co-petitioner Michael C.U. De Guzman. PASI was established by a consortium of private telecommunications carriers<sup>[2]</sup> which in 1994 had entered into a Memorandum of Understanding (MOU) with the DOTC, through its then Secretary Jesus Garcia, concerning the planned launch of a Philippine-owned satellite into outer space. Under the MOU, the launch of the satellite was to be an endeavor of the private sector, and the satellite itself to be owned by the Filipino-owned consortium (subsequently organized as PASI).<sup>[3]</sup> The consortium was to grant the Philippine government one (1) transponder free of charge for the government's exclusive use for non-commercial purpose, as well as the right of first refusal to another one (1) transponder in the Philippine satellite, if available.<sup>[4]</sup> The Philippine government, through the DOTC, was tasked under the MOU to secure from the International Telecommunication Union the required orbital slot(s) and frequency assignment(s) for the Philippine satellite.

PASI itself was organized by the consortium in 1996. The government, together with PASI, coordinated through the International Telecommunication Union two (2) orbital slots, designated as 161° East Longitude and 153° East Longitude, for Philippine satellites. On 28 June 1996, PASI wrote then DOTC Secretary Amado S. Lagdameo, Jr., seeking for official Philippine government confirmation on the assignment of the two aforementioned Philippine orbital slots to PASI for its satellites, which PASI had designated as the Agila satellites.<sup>[5]</sup> Secretary Lagdameo, Jr. replied in a letter dated 3 July 1996, confirming "the Philippine Government's assignment of Philippine orbital slots 161E and 153E to [PASI] for its [Agila]

satellites."<sup>[6]</sup>

PASI avers that after having secured the confirmation from the Philippine government, it proceeded with preparations for the launching, operation and management of its satellites, including the availment of loans, the increase in its capital, negotiation with business partners, and an initial payment of US\$3.5 Million to the French satellite manufacturer. However, respondent Lichauco, then DOTC Undersecretary for Communications, allegedly "embarked on a crusade to malign the name of [Michael de Guzman] and sabotage the business of PASI." Lichauco's purported efforts against PASI culminated allegedly in her offering orbital slot 153° East Longitude for bidding to other parties sometime in December 1997, despite the prior assignment to PASI of the said slot.<sup>[7]</sup> It was later claimed by PASI that Lichauco subsequently awarded the orbital slot to an entity whose identity was unknown to PASI.<sup>[8]</sup>

Aggrieved by Lichauco's actions, PASI and De Guzman instituted on 23 January 1998 a civil complaint against Lichauco, by then the Acting Secretary of the DOTC, and the "Unknown Awardee" who was to be the recipient of orbital slot 153° East Longitude. The complaint, alleging three (3) causes of action, was for injunction, declaration of nullity of award, and damages. The first cause of action, for injunction, sought to establish that the award of orbital slot 153° East Longitude should be enjoined since the DOTC had previously assigned the same orbital slot to PASI. The second cause of action, for declaration of nullity of award, averred that the award to the unknown bidder is null and void, as it was rendered by Lichauco beyond her authority.<sup>[9]</sup>

The third cause of action, for damages, imputed several acts to Lichauco as part of her alleged "crusade" to malign the name of plaintiff [D]e Guzman and sabotage the business of [PASI]:

12. xxx

(a) On 4 December 1996, in a meeting with the members of the Board of Directors of plaintiff corporation, defendant Lichauco then uttered disparaging and defamatory comments against plaintiff de Guzman. These defamatory remarks triggered efforts from within the plaintiff corporation aimed at ousting plaintiff de Guzman from his position.

(b) Defendant Lichauco, then an undersecretary of DOTC, wrote Mr. Jesli Lapuz on 5 December 1996 (barely two days after plaintiff de Guzman wrote him) to deny that the DOTC has assigned the two (2) Philippine orbital slots to plaintiff corporation. Defendant Lichauco falsely asserted that only orbital slot 161 E was assigned to plaintiff, orbital slot 153 E was not.

In the same letter, defendant Lichauco branded as FALSE plaintiff de Guzman's claim that "Agila" is a registered corporate name of plaintiff corporation.

A copy of the letter is attached as Annex E.

(c) Not contented, defendant Lichauco, again for reasons known only to her, and with malice aforethought, made defamatory remarks against plaintiffs during a telecommunications forum held in Makati City sometime in October 1997 in the presence of public officials and business executives.

(d) Defendant Lichauco did not spare plaintiff corporation from her unprovoked defamation. Defendant Lichauco arrogantly said that she had asked President Fidel V. Ramos to sue plaintiff Michael de Guzman. With the same degree of arrogance she threatened plaintiff corporation not to use the name "Agila", otherwise she would fight plaintiff corporation and would make sure that the name of Agila would never be given back to plaintiff corporation.

(e) To top it all, defendant Lichauco without basis and with evident bad faith, said that plaintiff corporation will never pay its contractors.

(f) In December 1997, defendant Lichauco delivered the *coup de' grace*. Again, acting unilaterally, without prior notice to plaintiff corporation and in gross violation of DOTC's earlier assignment to plaintiff corporation of orbital slot 153 E, defendant Lichauco offered said slot to interested applicants. A copy of the notice of offer is attached as Annex F.

13. Plaintiffs learned of defendant Lichauco's acts after orbital slot 153 E was offered for bidding. To plaintiff corporation's knowledge, the orbital slot was eventually awarded to defendant Unknown Awardee.

x x x x<sup>[10]</sup>

The complaint alleged that since Lichauco's act of offering and awarding orbital slot 153<sup>o</sup> East Longitude was patently illegal and violative of DOTC's prior commitment to PASI, Lichauco should be enjoined from performing any acts and entering into or executing any agreement or arrangement of whatever nature in connection with the said orbital slot. The complaint also averred that the purported award of the orbital slot to the "Unknown Awardee was illegal, and thus should be declared null and void. Finally, the complaint alleged a cause of action for damages against Lichauco, cast in the following manner:

x x x x

21. Defendant Lichauco attacked the good name and reputation of plaintiffs.
22. She willfully caused damage to plaintiffs by orchestrating the above-described acts which are contrary to law; morals and basic norms of good faith.

23. She interefered with and violated plaintiff corporation's contract with DOTC by offering and awarding orbital slot 153 E to defendant Unknown Awardee.
24. Because of defendant Lichauco's reprehensible acts, plaintiffs suffered actual damages of at least P10 million each, for all of which defendant Lichauco should be held liable to pay.
25. By reason of defendant Lichauco's illegal and malicious acts, plaintiff corporation's business name and goodwill was tarnished, for which plaintiff corporation should be indemnified by way of moral damages in the amount of at least P10 million.
26. For the same reasons, plaintiff de Guzman suffered and continue to suffer extreme mental anguish, serious anxiety, wounded feelings, moral shock and besmirched reputation, for all of which plaintiff de Guzman should be indemnified in the amount of at least P10 million.
27. Defendant Lichauco should also be sanctioned, as a deterrent for public good, to pay each plaintiff exemplary damages in the amount of at least P5 million.
28. In order to protect and enforce their rights, plaintiffs were compelled to institute this suit, engage the services of counsel and incur litigation expenses, for all of which plaintiffs should be indemnified in the amount of at least P500 Thousand each.<sup>[11]</sup>

x x x x

In sum, petitioners sought the following reliefs for the three (3) causes of action:

x x x x

3. After trial of the issues, render judgment as follows:

[a] On the first cause of action, making permanent the writ of preliminary injunction;

[b] On the second cause of action, declaring the offer and award of orbital slot 153 E to defendant Unknown Awardee null and void.

[c] On the third cause of action, directing defendant Lichauco to pay the following sums:

- i. P10 million each to plaintiffs as actual damages;
- ii. P10 million to plaintiff corporation as moral damages;
- iii. P10 million to plaintiff de Guzman as moral damages;
- iv. P5 million each to plaintiffs as exemplary damages;
- v. P500 Thousand each to plaintiffs as attorney's fees and litigation expenses.

x x x x<sup>[12]</sup>

The complaint was filed before the Regional Trial Court (RTC) of Mandaluyong City,

and subsequently raffled to Branch 214. On 2 February 1998, the RTC issued a temporary restraining order against Lichauco, who received the summons together with the complaint on 28 January 1998. Lichauco failed to file an answer within the reglementary period, but eight (8) days after the lapse thereof, she filed a Manifestation and Motion asking for a new five (5)-day period, or until 25 February 1998, to file a responsive pleading to the complaint. However, she filed instead a Motion to Admit with attached Motion to Dismiss on 27 February 1998. She rooted her prayer for the dismissal of the complaint primarily on the grounds that the suit is a suit against the State which may not be sued without its consent; that the complaint stated no cause of action; and that the petitioners had failed to exhaust administrative remedies by failing to seek recourse with the Office of the President.

In an order<sup>[13]</sup> dated 14 August 1998, the RTC denied the motion to dismiss. It characterized the defense of state immunity as "at very least a contentious issue which can not be resolved by mere allegations in the pleadings but which can be best threshed out in a litig[i]ous forum where parties are accorded enormous (*sic*) opportunity to argue for the ascertainment of whether the act complained of are indeed within the parameters and prerogatives of the authority exercising the same."<sup>[14]</sup> The RTC also noted that the allegations in the complaint regarding the ultimate facts sufficiently presented an *ultra vires* act of Lichauco, and that she was being sued in her personal capacity. As to the argument pertaining to the non-exhaustion of administrative remedies, the RTC noted that the principle is not an inflexible rule, and may be dispensed with when its application would cause great and irreparable damage or when it would not constitute a plain, speedy and adequate remedy.<sup>[15]</sup>

Lichauco assailed the RTC order through a Petition for Certiorari under Rule 65 before the Court of Appeals, which subsequently nullified the RTC order in the Decision now assailed before us. The Court of Appeals sustained the contention that the complaint is a suit against the State with the following ratiocination:

The suit is to the mind of this court a suit against the state.

The notice of offer signed by herein petitioner allegedly tainted with bad faith was done in the exercise of and in pursuance of an official duty. Her duties are as follows:

SEC. 10. Powers and Duties of the Undersecretary. The Undersecretary shall:

- (1) Advise and assist the Secretary in the formulation and implementation of department objectives and policies;
- (2) Oversee all the operational activities of the department for which he shall be responsible to the Secretary;
- (3) Coordinate the programs and projects of the department and be responsible for its economical, efficient and effective administration:

X X X X X X X X

It is apparent from the above enumeration that the petitioner is directly under and answerable to the DOTC Secretary. We can therefore conclude