

FIRST DIVISION

[G.R. No. 113191, September 18, 1996]

**DEPARTMENT OF FOREIGN AFFAIRS, PETITIONER, VS.
NATIONAL LABOR RELATIONS COMMISSION, HON. LABOR
ARBITER NIEVES V. DE CASTRO AND JOSE C. MAGNAYI,
RESPONDENTS.**

D E C I S I O N

VITUG, J.:

The questions raised in the petition for *certiorari* are a few coincidental matters relative to the diplomatic immunity extended to the Asian Development Bank ("ADB").

On 27 January 1993, private respondent initiated NLRC-NCR Case No. 00-01-0690-93 for his alleged illegal dismissal by ADB and the latter's violation of the "labor-only" contracting law. Two summonses were served, one sent directly to the ADB and the other through the Department of Foreign Affairs ("DFA"), both with a copy of the complaint. Forthwith, the ADB and the DFA notified respondent Labor Arbiter that the ADB, as well as its President and Officers, were covered by an immunity from legal process except for borrowings, guaranties or the sale of securities pursuant to Article 50(1) and Article 55 of the Agreement Establishing the Asian Development Bank (the "Charter") in relation to Section 5 and Section 44 of the Agreement Between The Bank And The Government Of The Philippines Regarding The Bank's Headquarters (the "Headquarters Agreement").

The Labor Arbiter took cognizance of the complaint on the impression that the ADB had waived its diplomatic immunity from suit. In time, the Labor Arbiter rendered his decision, dated 31 August 1993, that concluded:

"WHEREFORE, above premises considered, judgment is hereby rendered declaring the complainant as a regular employee of respondent ADB, and the termination of his services as illegal. Accordingly, respondent Bank is hereby ordered:

"1. To immediately reinstate the complainant to his former position effective September 16, 1993;

"2. To pay complainant full backwages from December 1, 1992 to September 15, 1993 in the amount of P42,750.00 (P4,500.00 x 9 months);

"3. And to pay complainants other benefits and without loss of seniority rights and other privileges and benefits due a regular employee of Asian Development Bank from the time he was terminated on December 31, 1992;

"4. To pay 10% attorney's fees of the total entitlements."^[1]

The ADB did not appeal the decision. Instead, on 03 November 1993, the DFA referred the matter to the National Labor Relations Commission ("NLRC"); in its referral, the DFA sought a "formal vacation of the void judgment." Replying to the letter, the NLRC Chairman, wrote:

"The undersigned submits that the request for the 'investigation' of Labor Arbiter Nieves de Castro, by the National Labor Relations Commission, has been erroneously premised on Art. 218(c) of the Labor Code, as cited in the letter of Secretary Padilla, considering that the provision deals with 'a question, matter or controversy within its (the Commission) jurisdiction' obviously referring to a labor dispute within the ambit of Art. 217 (on jurisdiction of Labor Arbiters and the Commission over labor cases).

"The procedure, in the adjudication of labor cases, including raising of defenses, is prescribed by law. The defense of immunity could have been raised before the Labor Arbiter by a special appearance which, naturally, may not be considered as a waiver of the very defense being raised. Any decision thereafter is subject to legal remedies, including appeals to the appropriate division of the Commission and/or a petition for certiorari with the Supreme Court, under Rule 65 of the Rules of Court. Except where an appeal is seasonably and properly made, neither the Commission nor the undersigned may review, or even question, the propriety of any decision by a Labor Arbiter. Incidentally, the Commission sits en banc (all fifteen Commissioners) only to promulgate rules of procedure or to formulate policies (Art. 213, Labor Code).

"On the other hand, while the undersigned exercises 'administrative supervision over the Commission and its regional branches and all its personnel, including the Executive Labor Arbiters and Labor Arbiters' (penultimate paragraph, Art. 213, Labor Code), he does not have the competence to investigate or review any decision of a Labor Arbiter. However, on the purely administrative aspect of the decision-making process, he may cause that an investigation be made of any misconduct, malfeasance or misfeasance, upon complaint properly made.

"If the Department of Foreign Affairs feels that the action of Labor Arbiter Nieves de Castro constitutes misconduct, malfeasance or misfeasance, it is suggested that an appropriate complaint be lodged with the Office of the Ombudsman.

"Thank you for your kind attention."^[2]

Dissatisfied, the DFA lodged the instant petition for certiorari. In this Court's resolution of 31 January 1994, respondents were required to comment. Petitioner was later constrained to make an application for a restraining order and/or writ of preliminary injunction following the issuance, on 16 March 1994, by the Labor Arbiter of a writ of execution. In a resolution, dated 07 April 1994, the Court issued the temporary restraining order prayed for.

The Office of the Solicitor General ("OSG"), in its comment of 26 May 1994, initially assailed the claim of immunity by the ADB. Subsequently, however, it submitted a Manifestation (dated 20 June 1994) stating, among other things, that "after a thorough review of the case and the records," it became convinced that ADB, indeed, was correct in invoking its immunity from suit under the Charter and the Headquarters Agreement.

The Court is of the same view.

Article 50(1) of the Charter provides:

"The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities."^[3]

Under Article 55 thereof -

"All Governors, Directors, alternates, officers and employees of the Bank, including experts performing missions for the Bank:

"(1) shall be immune from legal process with respect of acts performed by them in their official capacity, except when the Bank waives the immunity."^[4]

Like provisions are found in the Headquarters Agreement. Thus, its Section 5 reads:

"The Bank shall enjoy immunity from every form of legal process, except in cases arising out of, or in connection with, the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities."^[5]

And, with respect to certain officials of the bank, Section 44 of the agreement states:

"Governors, other representatives of Members, Directors, the President, Vice-President and executive officers as may be agreed upon between the Government and the Bank shall enjoy, during their stay in the Republic of the Philippines in connection with their official duties with the Bank:

" x x x

x x x

x x x

"(b) Immunity from legal process of every kind in respect of words spoken or written and all acts done by them in their official capacity."^[6]

The above stipulations of both the Charter and Headquarters Agreement should be able, nay well enough, to establish that, except in the specified cases of borrowing and guarantee operations, as well as the purchase, sale and underwriting of securities, the ADB enjoys immunity from legal process of every form. The Bank's officers, on their part, enjoy immunity in respect of all acts performed by them in their official capacity. The Charter and the Headquarters Agreement granting these

immunities and privileges are treaty covenants and commitments voluntarily assumed by the Philippine government which must be respected.

In *World Health Organization vs. Aquino*,^[7] we have declared:

"It is a recognized principle of international law and under our system of separation of powers that diplomatic immunity is essentially a political question and courts should refuse to look beyond a determination by the executive branch of the government, and where the plea of diplomatic immunity is recognized and affirmed by the executive branch of the government x x x it is then the duty of the courts to accept the claim of immunity upon appropriate suggestion by the principal law officer of the government, x x x or other officer acting under his direction. Hence, in adherence to the settled principle that courts may not so exercise their jurisdiction x x x as to embarrass the executive arm of the government in conducting foreign relations, it is accepted doctrine that `in such cases the judicial department of government follows the action of the political branch and will not embarrass the latter by assuming an antagonistic jurisdiction.'"^[8]

To the same effect is the decision in *International Catholic Migration Commission vs. Calleja*,^[9] which has similarly deemed the Memoranda of the Legal Adviser of the Department of Foreign Affairs to be "a categorical recognition by the Executive Branch of Government that ICMC x x x enjoy(s) immunities accorded to international organizations" and which determination must be held "conclusive upon the Courts in order not to embarrass a political department of Government." In the instant case, the filing of the petition by the DFA, in behalf of ADB, is itself an affirmance of the government's own recognition of ADB's immunity.

Being an international organization that has been extended a diplomatic status, the ADB is independent of the municipal law.^[10] In *Southeast Asian Fisheries Development Center vs. Acosta*,^[11] the Court has cited with approval the opinion^[12] of the then Minister of Justice; thus -

"One of the basic immunities of an international organization is immunity from local jurisdiction, i.e., that it is immune from the legal writs and processes issued by the tribunals of the country where it is found. (See *Jenks, Id.*, pp. 37-44). The obvious reason for this is that the subjection of such an organization to the authority of the local courts would afford a convenient medium thru which the host government may interfere in their operations or even influence or control its policies and decisions of the organization; besides, such subjection to local jurisdiction would impair the capacity of such body to discharge its responsibilities impartially on behalf of its member-states."^[13]

Contrary to private respondent's assertion, the claim of immunity is not here being raised for the first time; it has been invoked before the forum of origin through communications sent by petitioner and the ADB to the Labor Arbiter, as well as before the NLRC following the rendition of the questioned judgment by the Labor Arbiter, but evidently to no avail.