

CESAR REYES, ET ALS., PLAINTIFFS AND APPELLANTS, VS. MAX BLOUSE, ET ALS., DEFENDANTS AND APPELLEES.

G.R. No. L-4420. May 19, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action instituted by the plaintiffs as minority stockholders of the Lacuna Tayabas Bus Co. to restrain its Board of Directors composed of the defendants from carrying out a resolution approved by approximately 92 1/2 per cent of the stockholders in a meeting held on July 30, 1947, authorizing said Board of Directors to take the necessary steps to consolidate the properties and franchises of the Laguna Tayabas Bus Co. with those of the Batangas Transportation Co. The grounds on which plaintiffs predicate their action are:

"1. That the proposed consolidation or merger of the two companies would be prejudicial to the L. T. B. Co. and to the appellants in particular who do not own shares of stock of B. T. Co. in that:

'a. During the last ten years prior to the last war, the dividends declared by L. T. B. Co. were increasing, whereas the dividends declared by B. T. Co. were decreasing in amount.

'b. In 1941, the shares of L. T. B. Co. cost P250 each in the market, whereas the shares of B. T. Co. cost only P150 each.

'c. A comparative study of the net gains of each company for the first six months of 1947 showed that the profits of the L. T. B. Co. exceeded B. T. Co. by approximately P67,000.00. As a consequence, the shares of L. T. B. Co. were costing P360 a share, while the shares of B. T. Co. were quoted at only P200.'

2. That the proposed consolidation or merger was illegal because the unanimous vote of the stockholders was not secured and that the same was contrary to the spirit of our laws. (Rec. on Appeal, pp. 19-20)".

After the filing of the complaint, the court granted the writ of preliminary injunction prayed for therein upon a nominal bond of P5,000, which later was increased to P10,000.

Defendants twice moved to dissolve the writ of preliminary injunction, but both motions were denied by the lower court.

The defendants also asked for the dismissal of the complaint on the ground that the facts therein alleged do not constitute sufficient cause of action. In connection with the determination of this incident, defendants submitted an affidavit of Max Blouse, President of the Laguna Tayabas Bus Co., outlining the steps to be taken by the Board of Directors in carrying out the merger or consolidation authorized in the disputed resolution. The court, however, deferred its resolution on the motion until after trial on the merits. After due trial, at which both parties presented their respective evidence, the lower court rendered its decision, the dispositive portion of which reads:

"For all the foregoing considerations, the court is of the opinion and so holds that the controversial proposed acts to be performed by the defendants, directors of the Laguna Tayabas Bus Co., are within the authority granted under Section 28 1/2 of the Corporation Law. The complaint, therefore, is dismissed and the

preliminary injunction is hereby lifted without pronouncement as to costs. (Record on Appeal, p. 182)".

On motion of the plaintiffs, the court a quo revived the writ of preliminary injunction which was dissolved in its decision above mentioned and maintained the status quo of the case pending appeal upon a new indemnity bond of P30,000, which was subsequently increased to P50,000.

The case is now before this Court on appeal interposed by the plaintiffs who impute six errors to the lower court.

The principal issue involved in this appeal is whether the real purpose of the disputed resolution is the merger or consolidation of the properties and franchises of the Laguna Tayabas Bus Co. with those of the Batangas Transportation Co., within the meaning of the law, and in the affirmative case, whether said merger or consolidation can be carried out under the law now existing and in force in the Philippines. On one hand, counsel for the plaintiffs contends that its real purpose is to effect a merger or consolidation, and as such there is no law in the Philippines under which it may properly be carried out; on the other hand, counsel for defendants maintains the negative view, holding that it is merely an exchange of properties sanctioned by our corporation law, as amended, and that even if it be considered as a consolidation, the same can still be carried out under Commonwealth Act No. 146, section 20, otherwise known as the Public Service Law.

The disputed resolution, which was approved on July 20, 1947, at a special meeting held by the stockholders of the Laguna Tayabas Bus Co. reads as follows:

"Resolved that the Board of Directors of the Laguna Tayabas Bus Company, be as it hereby is, authorized to take the necessary steps to consolidate the properties and franchises of the corporation with those of the Batangas Transportation Company under a single corporation by the organization of a new corporation and to dispose to such new corporation all the properties and franchises of the corporation in return for stock of the new corporation, or by the exchange of stock, and/or through such other means as may be deemed most advisable by the Board of Directors."

It should be noted that under the above resolution, the Board of Directors is charged with the authority to take the necessary steps to consolidate the properties and franchises of the Laguna Tayabas Bus Co. with those of the Batangas Transportation Co. under a new corporation in return for stock of the new corporation, or by exchange of stock, and/or through such other means as may be deemed most advisable by the Board of Directors. The way and manner the consolidation shall be effected is, therefore, left to the discretion of the Board of Directors. In pursuance of this broad authority, the Board of Directors acted and the steps it has taken having in view the interest of both corporations are outlined in the affidavit attached to the memorandum submitted to the court by Max Blouse, president of the two corporations above mentioned. The substance of this affidavit is: that both corporations have passed similar resolutions authorizing the Board of Directors to take such steps as may be necessary to effect the consolidation; that the Board of Directors of the Laguna Tayabas Bus Co. has decided to transfer its assets, franchises and other properties to the new corporation, from which shall be excluded the claims that it has against the United States Army and the cash it has received from it for the use and commandeering of its busses and other stock and equipment during the war; that the Laguna Tayabas Bus Co. will not transfer any of its liabilities to the new corporation; and that said company will not be dissolved but will continue existing, although not operating, until the stockholders decide to dissolve the same.

It is apparent that the purpose of the resolution is not to dissolve the Laguna Tayabas Bus Co. but merely to transfer its assets to a new corporation in exchange for its corporation stock. This intent is clearly deducible from the provision that the Laguna Tayabas Bus Co. will not be dissolved but will continue existing until its stockholders decide to dissolve the same. This comes squarely within the purview of section 28 1/2 of the corporation law which provides, among others, that a corporation may sell, exchange, lease or otherwise dispose

of all its property and assets, including its good will, upon such terms and conditions as its Board of Directors may deem expedient when authorized by the affirmative vote of the shareholders holding at least 2/3 of the voting power. The words "or otherwise disposed of" is very broad and in a sense covers a merger or consolidation. The action of the corporation was taken having in view this provision of our corporation law and in our opinion the corporation has acted correctly.

But appellants contend that the disputed resolution calls for a real merger or consolidation in the sense and in the manner said terms are intended and understood under the law and authorities of the United States, citing in support of their contention a long line of American authorities, and that viewing the resolution in that light, the same cannot come within the purview of section 28 1/2 of our corporation law, as claimed by appellees. But even if we view the resolution in the light of the American authorities, we are of the opinion that the transaction called for therein cannot be considered, strictly speaking, as a merger or consolidation of the two corporations because, under said authorities, a merger implies necessarily the termination or cessation of the merged corporations and not merely a merger of their properties and assets. This situation does not here obtain. The two corporations will not lose their corporate existence or personality, or at least the Laguna Tayabas Bus Co., but will continue to exist even after the consolidation. In other words, what is intended by the resolution is merely a consolidation of properties and assets, to be managed and operated by a new corporation, and not a merger of the corporations themselves.

Granting arguendo that the diluted resolution has really the intention and the purpose of carrying out the merger or consolidation both of the assets and properties of the two corporations as well as of the two corporations themselves in the true sense of the word, or in the light of the American authorities, still we believe that this can be carried out in this jurisdiction in the light of our Public Service Law. Thus, section 20 (g) of Commonwealth Act No. 146, as amended, prohibits any public service operator, unless with the approval of the Public Service Commission, "to sell, alienate, mortgage, encumber or lease its property, franchises, certificates, privileges, or rights, or any part thereof, or merge or consolidate its property, franchises, privileges or right or any part thereof, with those of any other public service". This law speaks of merger or consolidation of public services engaged in land transportation. It does not impose any qualification except that it shall be done with the approval of the Public Service Commission. There is no doubt that the intended merger or consolidation comes within the purview of this legal provision.

The claim that the merger or consolidation of two land transportation companies cannot be carried out in this jurisdiction because it is prohibited by Act No. 2772, is untenable in the light of the very provisions of said Act. A careful analysis of said act will show that it only regulates the merger or consolidation of railroad companies, or of a railroad company with any other carrier by land or water. Said act does not apply to the merger or consolidation of two corporations exclusively engaged in land transportation. To extend the meaning and scope of said Act 2772 to the merger or consolidation of land carriers would be to render nugatory the provisions of the Public Service Law, which effect cannot be implied because the latter law (1936) is of more recent enactment than the former (1918). As to how the merger or consolidation shall be carried out, our corporation law contains ample provisions to this effect (sections 17 1/2, 18, and 25 1/2). This law does not require that there be an express legislative authority, or a unanimous consent of all stockholders, to effect a merger or consolidation of two corporations.

Plaintiffs object to the use made by the lower court of the affidavit submitted by Max Blouse, president of the merging corporations, in connection with the incident relative to the motion to dismiss filed by the defendants to which affidavit no objection has been interposed by the plaintiffs and for that reason that affidavit became part of the record. As said affidavit was submitted with the motion to dismiss and other exhibits presented by both parties

for the consideration of the court, we find no reason why the lower court should err in considering it in its decision and why it cannot now be considered in this appeal. This action of the court was merely in line with the move of the parties when they submitted for consideration the motion to dismiss filed by the defendants.

The remaining question to be determined refers to the claim that the proposed consolidation or merger of the two corporations would be prejudicial to the Laguna Tayabas Bus Co. and to the appellants in particular who do not own shares of stock of the Batangas Transporation Co. This is a question of fact which much depends upon the evidence submitted by the parties. After weighing the evidence, the lower court reached the conclusion that the merger would not be prejudicial or disadvantageous to the appellants or to the stockholders of the Laguna Tayabas Bus Co. On this point the court said: "The testimony of Max Blouse, who had founded both the Laguna Tayabas Bus Co. and the Batangas Transportation Co., should be given considerable weight and credence not only because of the position which he enjoys in both companies, but also because of his long experience in the transportation business in this country. His opinion, therefore, insofar as he states that the earnings of both companies should be about equal, in normal circumstances, is entitled to more weight and credit than that of the plaintiffs".

To the foregoing we may add the following: the Laguna Tayabas Bus Co. and the Batangas Transportation Co. are prewar corporations organized in 1928 and 1918, respectively. They ceased operating during the war. In April, 1945, they resumed operations, and pursuant to the authority granted by the respective Board of Directors, the two companies were jointly operated under a single management. In view of the success of this joint operation, it was strongly recommended that it be continued and made permanent. For this purpose a meeting of the stockholders was called, and the disputed resolution was approved. And this resolution was approved because the stockholders found that with the consolidation, the two companies would enjoy the services of the same technical men, would invest much less in the purchase of spare parts, would effect savings in running one machine shop, instead of two, would employ less personnel, and in general, both companies would effect a substantial economy in men, materials and operation expenses. The merger or consolidation has been voted upon by two-thirds vote of the stockholders. Their action is decisive. They have acted having in view only the best interests of both companies. It is not fair to allow a small minority to undo or set at naught what they have done. The remedy of the appellants is to register their objection in writing and demand payment of their shares from the corporation as provided for in section 28 1/2 of the corporation law.

Wherefore, the decision appealed from is hereby affirmed, with costs against the appellants.

Paras, C.J., Feria, Pablo, Bengzon, Tuason, Montemayor, and Labrador, JJ., concur.

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