

**DOMINGO PONCE AND BUHAY L. PONCE, PETITIONERS, VS.
DEMETRIO B. ENCARNACION, JUDGE OF THE COURT OF FIRST
INSTANCE OF MANILA, BRANCH I, AND POTENCIANO GAPOL,
RESPONDENTS.**

G.R. No. L-5883. November 28, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari to annul an order of the respondent court granting Potenciano Gapol authority, pursuant to section 26, Act No. 1459, otherwise known as the Corporation Law, to call a meeting of the stockholders of the Daguhoy Enterprises, Inc. and to preside at such meeting by giving proper notice to the stockholders, as required by law or the by-laws of the corporation, until after the majority of the stockholders present and qualified to vote shall have chosen one of them to act as presiding officer of the meeting; another order denying a motion of the petitioners to have the previous order set aside; and a third order denying a motion to the same effect as the one previously filed.

The petitioners aver that the Daguhoy Enterprises, Inc., was duly registered as such on 24 June 1948; that on 16 April 1951 at a meeting duly called, the voluntary dissolution of the corporation and the appointment of Potenciano Gapol as receiver were agreed upon and to that end a petition for voluntary dissolution was drafted which was sent to, and signed by, the petitioner Domingo Ponce; that instead of filing the petition for voluntary dissolution of the corporation as agreed upon, the respondent Potenciano Gapol, who is the largest stockholder, changed his mind and filed a complaint in the Court of First Instance of Manila (civil No. 13753) to compel the petitioners to render an accounting of the funds and assets of the corporation, to reimburse it, jointly and severally, in the sum of P4,500, the purchase price of a parcel of land acquired by the corporation; P6,190 loaned to the wife of petitioner Domingo Ponce; and P8,000 spent by the latter in his trip to the United States, or a total sum of P18,690, plus interest, or such sum as may be found after the accounting shall have been rendered to have been misspent, misapplied, misappropriated and converted by the petitioner Domingo Ponce to his own use and benefit; that on 18 May 1951 the plaintiff in that case, the respondent Potenciano Gapol in this case, filed a motion praying that the petitioners be removed as members of the board of directors which was denied by the court; that on 3 January 1952 respondent Pontenciano Gapol filed a petition (civil No. 15445, Exhibit L) praying for an order directing him to call a meeting of the stockholders of the corporation and to preside at such meeting in accordance with section 26 of the Corporation Law; that two days later, without notice to the petitioners and to the other members of the board of directors and in violation of the Rules of Court which require that the adverse parties be notified of the hearing of the motion three days in advance, the respondent court issued the order as prayed for (Exhibit M); that the petitioners learned only of this order of the court on 27 February, when the Bank of America refused to recognize the new board of directors elected at such meeting and returned the new board of directors elected at such meeting and returned the checks drawn upon it by the said board of directors; that the election of Juanito R. Tianzon as member of the board of directors was illegal because to be elected to the board

of directors of the corporation he must be a member of the Legionarios del Trabajo, as required and provided for in article 7 of the by-laws of the corporation; that on 5 March the petitioners filed a petition in the respondent court to have the order of 5 January set aside but on 5 April, the date set for the hearing of the petition, as the respondent judge was on leave the vacation judge directed its transfer to the branch of the respondent judge; that without having set the motion for hearing, the respondent court denied the motion of 5 March in its order of 7 May; that on 14 May the petitioners filed another motion inviting the attention of the respondent court to the irregularity and illegality of its procedure and setting the motion for hearing on 21 May, but the court denied the motion by its order of 13 June.

The only question to determine in this case is whether under and pursuant to section 26 of Act No. 1459, known as the Corporation Law, the respondent court may issue the order complained of said section provides:—

Whenever, from any cause, there is no person authorized to call a meeting, or when the officer authorized to do so refuses, fails, or neglects to call a meeting, any judge of a Court of First Instance, on the showing of good cause therefor, may issue an order to any stockholder or member of a corporation, directing him to call a meeting of the corporation by giving the proper notice required by this Act or the by-laws; and if there be no person legally authorized to preside at such meeting, the judge of the Court of First Instance may direct the person calling the meeting to preside at the same until a majority of the members or stockholders representing a majority of the stock present and permitted by law to be voted have chosen one of their number to act as presiding officer for the purposes of the meeting.

On the showing of good cause therefor, the court may authorize a stockholder to call a meeting and to preside thereat until the majority stockholders representing a majority of the stock present and permitted to be voted shall have chosen one among them to preside it. And this showing of good cause therefor exists when the court is apprised of the fact that the by-laws of the corporation require the calling of a general meeting of the stockholders to elect the board of directors but the call for such meeting has not been done.

Article 9 of the by-laws of the Daguhoy Enterprises, Inc., provides:

The Board of Directors shall compose of five (5) members who shall be elected by the stockholders in a general meeting called for that purpose which shall be held every even year during the month of January.

Article 20 of the by-laws in part provides:

* * * Regular general meetings are those which shall be called for every even year, * * *.

Article 22 of the by-laws provides:

The Chairman shall have the right to fix the date, the time and the place where the general meeting shall be held, either special or general.

The requirement that "on the showing of good cause therefor," the court may grant to a stockholder the authority to call such meeting and to preside thereat does not mean that the petition must be set for hearing with notice served upon the board of directors. The respondent court was satisfied that there was a showing of good cause for authorizing the respondent Potenciano Gapol to call a meeting of the stockholders for the purpose of electing the board of directors as required and provided for in the by-laws, because the chairman of the board of directors called upon to do so had failed, neglected, or refused to perform his duty. It may be likened to a writ of preliminary injunction or of attachment which may be issued ex-parte upon compliance with the requirements of the rules and upon the court being satisfied that the same should issue. Such provisional reliefs have not been deemed and held as violative of the due process of law clause of the Constitution.

In several states of the Union^[1] the remedy which may be availed of or resorted to in a situation such as the one

brought about in this case is mandamus to compel the officer or incumbent board of directors to perform a duty specifically enjoined by law or the by-laws, to wit: to call a meeting of the stockholders. Delaware is the state that has a law similar to ours and there the chancellor of a chancery court may summarily issue or enter an order authorizing a stockholder to call a meeting of the stockholders of the corporation and preside thereat.[2] It means that the chancellor may issue such order without notice and hearing.

That the relief granted by the respondent court lies within its jurisdiction is not disputed. Having the authority to grant the relief, the respondent court did not exceed its jurisdiction; nor did it abuse its discretion in granting it.

With persistency petitioners claim that they have been deprived of their right without due process of law. They had no right to continue as directors of the corporation unless reelected by the stockholders in a meeting called for that purpose every even year. They had no right to a hold-over brought about by the failure to perform the duty incumbent upon one of them. If they felt they were sure to be reelected, why did they fail, neglect, or refuse to call the meeting to elect the members of the board? Or, why did they not seek their reelection at the meeting called to elect the directors pursuant to the order of the respondent court?

The alleged illegality of the election of one member of the board of directors at the meeting called by the respondent Potenciano Gapol as authorized by the court being subsequent to the order complained of cannot affect the validity and legality of the order. If it be true that one of the directors elected at the meeting called by the respondent Potenciano Gapol, as authorized by the order of the court complained of, was not qualified in accordance with the provisions of the by-laws, the remedy of an aggrieved party would be quo warranto. Also, the alleged previous agreement to dissolve the corporation does not affect or render illegal the order issued by the respondent court.

The petition is denied, with costs against the petitioners.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1]Alabama, California, Connecticut, Georgia, Illinois, Kentucky, Massachusetts, Minnesota, Nevada, New Jersey, New York, North Carolina. See 5 Fletcher Cyclopedia (of) Corporations, p. 15, footnotes. [2] In re Jackson, 9 Del. 279, 81 Atl., 992; In re Gullah, 13 Del. Ch. 1, 114 Atl., 596.

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