

J. A. WOLFSON, PETITIONER AND APPELLANT, VS. MANILA STOCK EXCHANGE, RESPONDENT AND APPELLEE.*G.R. No. 47411. June 27, 1941*

Ponente: LAUREL, J.

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This is a petition for the issuance of a writ of mandamus filed by J. A. Wolfson to compel the Manila Stock Exchange to revoke a resolution adopted by its board of directors on October 2, 1936, rescinding a previous resolution dated August 16, 1927, whereby the petitioner was elected honorary member of the respondent corporation for life with all the rights, privileges and prerogatives of a regular member with the exception of the right to vote and further exempted from the payment of dues or assessments, and thereby restore the petitioner in the enjoyment of all the rights and privileges granted him by the aforesaid resolution of August 16, 1927.

The respondent is a non-stock corporation organized under the laws of the Philippines and registered in the Bureau of Commerce on August 10, 1927. In consideration of the services rendered by the petitioner in assisting in the organization of the Exchange, for which the petitioner charged a nominal fee, and because he consented to act as its secretary for the time being, the original members or incorporators of the respondent corporation approved, a resolution at the meeting called to adopt the by-laws on August 16, 1927, unanimously electing the petitioner an honorary member of the Exchange for life with the privileges already enumerated, and the petitioner was accordingly issued a certificate of membership on September 1, 1927. Nine years later, on September 4, 1936 to be exact, the petitioner wrote a letter to the respondent asking for a copy of the revised rules and regulations of the Exchange. The respondent corporation refused to honor his request alleging that its rules and regulations entitled only regular members to all the privileges and that said rules contain no provision regarding honorary members. The petitioner addressed two more letters to the respondent calling attention to his "vested rights" as honorary member, and the respondent, after consulting with counsel, apprised him of the passage of a unanimous resolution by the board of directors on October 2, 1936, rescinding his honorary membership for life. Whereupon the petitioner instituted the present action.

The respondent filed the following special defense to petitioner's complaint:

"1. That neither the by-laws nor the articles of incorporation of the Manila Stock Exchange contained any provision or authority for the creation of an honorary membership for life therein and the election of persons other than those mentioned in the by-laws, and that that fact was known to the petitioner.

"2. That on August 25, 1927, while the provision in respondent's by-laws limiting membership in the Exchange to ten was in force, five new members were admitted to the Exchange, thereby completing the membership to ten without including the petitioner, with the knowledge and acquiescence of the petitioner.

"3. That there have been changes in the number of members of the Manila Stock Exchange, so that at the time of the institution of this action, the membership had been increased to thirty, and that the new members coming after August 16, 1927, purchased their membership without knowledge of petitioner's claim to life membership in the Exchange, and petitioner made no such claim until shortly before the filing of the present

action.

"4. That the resolution electing the petitioner to honorary membership for life was rescinded by a resolution of the Board of Directors adopted on October 2, 1936." By way of cross-complaint the respondent further prayed that petitioner be ordered to surrender his certificate of membership for cancellation.

The Court of First Instance of Manila in a decision rendered on August 31, 1937, denied the writ prayed for by the petitioner and ordered the latter to surrender his certificate of membership to the respondent for cancellation. Hence, the present appeal by the petitioner which has been elevated to this court by the Court of Appeals. Petitioner-appellant assigns the following errors:

"I. The lower court erred in failing to declare that petitioner had acquired a vested right to the use and enjoyment of a membership or 'seat' in the respondent exchange and to participate in its assets.

"II. The lower court erred in declaring that the resolution adopted by all the members of the respondent exchange, electing petitioner as an honorary member for life, is a nullity.

"III. The lower court erred in declaring that the Board of Directors of the respondent exchange did nothing illegal when, in the exercise of the authority conferred upon it by the by-Laws, it rescinded petitioner's honorary membership; his vested rights.

"IV. The lower court erred in denying petitioner's petition for mandamus and in ordering petitioner to surrender his certificate of honorary membership for cancellation and in denying motion for new trial."

To our mind, however, this case may be decided on the issue raised in the second assignment of error, and that is, whether the resolution of August 16, 1927, electing the petitioner to honorary membership for life with all the rights, privileges and prerogatives of a regular member, except the right to vote, and exempting him from the payment of all dues and assessments, is valid or not.

The pertinent portion of the by-laws adopted by the members of the respondent corporation at its meeting of August 16, 1927, just before they elected the petitioner to honorary membership for life, provides:

"Art. I, Sec. 3. Any male person of the age of twenty-one (21) years and upwards who now or hereafter carries on or desires to carry on the business of stockbroker shall subject to the by-laws of this Association, be eligible for membership in the Association."

"Art. II, Sec. 6. All applications for membership shall be in writing, and shall be passed upon by the Board of Directors, and it shall require three (3) affirmative votes to elect a member. No application shall be voted upon until five days after written application is placed before the Board of Directors."

"Art. I, Sec. 7. All applications for the membership shall be posted on a board to be kept for that purpose at the office of the exchange for at least seven (7) clear days before the date on which said name is to be voted."

"Art. I, Sec. 14. The subscription to the Association shall be P50 per annum to be paid half yearly in advance by every member, commencing August 1, 1927. A member elected after the first half in any year shall not be liable to pay his half yearly subscription for any half year prior to the one in which his election takes place."

"Art. I, Sec. 16. The entrance fee of the Association shall be P500 as regards all members who are signatories of these By-Laws and P500 as regards all members who shall become members after the registration of same."

"Art. II, Sec. 2. Special meetings of the members shall be held when called by the President, or by three (3) or more directors, or by a majority of the members. No action may be taken at special meetings except within the premises specified in the call."

"Art. III, Sec. 3. The Board of Directors shall pass upon all applications for membership and it shall require the affirmative vote of at least three (3) members to admit a candidate, and the Board by vote of three members

thereof shall have absolute power to expel a member, to declare his membership forfeited, suspend, or otherwise discipline a member. The decision of the Board in such cases shall be final."

It appears that the election of the petitioner as honorary life member of the respondent corporation did not follow the procedure prescribed by the by-laws afore quoted. The petitioner is a practising attorney and there is no showing that he has ever been a stockbroker. Petitioner contends that the by-laws qualify a person who "desires to carry on the business of stockbroker" and that proviso makes him eligible inasmuch as nobody knows what he had in mind at the time of his election to honorary life membership. The petitioner, however, never alleged nor did even attempt to prove that he desired to carry on the business of stockbroker at the time of his election; and no suggestion is even made that he ever engaged in the business of stockbroker for almost ten years from the time of his election to the date of the filing of the present action.

The requisites as to the filing of an application, publication, payment of entrance and subscription fees, and the action to be taken by the board of directors, have not been complied with. Petitioner argues, however, that there was no need for him to file an application because he was not admitted but elected to membership, that the terms of his election expressly exempted him from the payment of all dues and assessments, that there was no need for the board of directors to act on his election because there was then no extant board of directors and moreover he was elected unanimously by all the members, and that he was not a regular member but only an honorary member. Indeed, if a person is elected and not admitted in the ordinary course, it would seem absurd to require him to file an application and to have that application posted and voted upon after the lapse of a certain period of time. It would seem absurd further to expect the person concerned to pay the entrance and subscription fees if he is expressly exempted therefrom. But we are here concerned with the authority to dispense with the requirements imposed by the by-laws of the respondent corporation. There is no provision in the by-laws for the election of a member, whether regular or honorary. There is not even mention of honorary members, either defining their status or governing their admission or election into the corporation, or providing for their exemption from the payment of all dues and assessments. There is no showing that the election of the petitioner herein to honorary life membership in the respondent corporation is incidental to its corporate existence or that it is among the implied powers granted it to do all acts that may be necessary to enable it to exercise the powers expressly conferred and to accomplish the objects for which it was created. Neither can the resolution electing the petitioner to honorary life membership be regarded as an amendment of the by-laws because the resolution in question did not say so in express terms nor is there any evidence to prove that the members so understood it when it was voted upon and approved, and it has not been registered in the Bureau of Commerce as were the original by-laws and subsequent amendments thereto; moreover, petitioner himself does not claim said resolution to be an amendment to the original by-laws. The resolution designated the petitioner an honorary member and conferred upon him all the rights, privileges and prerogatives of a regular member except the right to vote. It stands to reason that his admission or election must follow the requisites prescribed for the admission of regular members, for he is to all intents and purposes a regular member. One cannot be a regular member for the purpose of enjoying the benefits of a regular membership and at the same time evade its corresponding obligations on the ground that he is an honorary member so-called. An honorary membership in a business corporation is an incongruity and finds no sanction either in law or custom.

The failure to fulfill the requirements exacted by the by-laws of prospective members is, therefore, fatal to petitioner's pretension to membership in the respondent corporation. As held in the case of *American Livestock Commission Co. v. Chicago Livestock Exchange*, 143 Ill. 210, 32 N. E. 274, 18 L. R. A. 190, the by-laws prescribe the mode, and the only in which membership in the exchange can be obtained, and no one can justly claim to be a member who has not been admitted in the mode thus prescribed. The principle is that if the governing law prescribes the conditions or special methods for becoming a member of a corporation, the law is

imperative, and the courts have adhered strictly to this general rule. (*Mills v. Firedman*, III Misc. Rep. 253, 181 N. Y. S. 285; *Peninsula Leasing Co. v. Cody*, 161 Mich. 674t 126 N. W. 1052.)

We also observe that it was not the board of directors, as required by section 28 of the Corporation Law or the by-laws of the respondent corporation, but the members present at the meeting of August 16, 1927 who "elected" the petitioner herein to honorary membership for life.

It is an elementary rule that the powers vested in the directors or trustees of a corporation must be exercised by them, and cannot be exercised by the stockholders, and the stockholders' action can be sustained only in some circumstances which dispense with the directors' action as a mere formality. The fact that all of the members were present at the meeting of August 16, 1927, does not make its resolution electing the petitioner to honorary membership the act of the corporation, for acts done by all the stockholders are not binding on the corporation, if they should have been done by the directors. (See 5 Fletcher, on Corporations, pp. 338-340.) This court has held in the case of *Ramirez vs. Orientalist Co.* (38 Phil., 634, 654).

"Both upon principle and authority it is clear that the action of the stockholders, whatever its character, must be ignored. The functions of the stockholders of a corporation are, it must be remembered, of a limited nature. The theory of a corporation is that the stockholders may have a share in the profits but shall turn over the complete management of the enterprise to their representatives and agents, called directors. Accordingly there is little for the stockholders to do beyond electing directors, making by-laws, and exercising certain other special powers defined by law."

The fact that there was then no board of directors in existence at the time the resolution in question was passed, did not justify the members in assuming to exercise a power which they did not possess. Moreover, the board of directors was elected immediately after the resolution was passed, and far from ratifying the resolution of the members, it practically repudiated such resolution when at the meeting of August 25, 1927, while the provision in the by-laws limiting membership to ten was in force, it admitted five new members, thus filling the quota of ten members without including the petitioner. After subsequent amendments of the by-laws limiting membership first to twenty, then to twenty-five, and finally to thirty, the quota was invariably completely filled without including the petitioner. And on October 2, 1936 the board of directors expressly rescinded the resolution of August 16, 1927 under which the petitioner claims honorary life membership in the respondent corporation. As a matter of fact, the resolution in question being ultra vires, no formal act was necessary on the part of the board of directors to declare it invalid.

Apart from the purely legal aspects of the case, the petitioner is not entitled to the remedy sought on equitable grounds. Petitioner was the one who drew up the by-laws of the corporation and it seems fair that he should have been charged with knowledge that the resolution of August 16, 1927, did not fulfill the requirements of said by-laws pertaining to the admission of members. Petitioner was also present at the meeting of August 25, 1927 when five new members were admitted to complete the quota of ten members provided in the by-laws, without including the petitioner, and as he did not protest against such action, he should be deemed to have acquiesced therein. Moreover, apart from the five original members who illegally "elected" him to honorary membership, the other members who were subsequently admitted to the respondent corporation were not aware of the resolution giving petitioner all the rights, privileges and prerogatives of a regular member except the right to vote and exempting him from the payment of fees, at the time they sought and paid admission to the respondent corporation and petitioner made no attempt to apprise them of the fact or assert his pretended rights until shortly before the filing of the present complaint. Having chosen to keep silent from 1927 until 1936 when membership in the respondent corporation had increased to thirty, when at least twenty-five new members were admitted without notice of his claim, when the price of a seat in the Exchange had risen from P500 to P85,000, and when in

conscience he should have asserted his pretended rights because they would have affected not only the price of seats in the Exchange but also the membership therein, he cannot now in conscience be allowed to disown what he has allowed the public to believe and to act upon such belief. "Inexcusable delay in asserting a right and acquiescence in existing conditions are a bar to legal action." (Sec. 333, C. C. P.; No. 123, sec. 63 [a] Rules of Court; *Tuason v. Martinez*, 45 Phil., 381, 384.)

From what has been said, it follows that the second assignment of error raised by the petitioner-appellant must be overruled on the ground that the resolution of August 16, 1927, making him an honorary life member of the respondent-appellee corporation, is not only invalid but unenforceable from the point of view of both law and equity. As we have already resolved the issue determinative of the case at bar, it is unnecessary to pass upon the remaining assignments of error raised by the petitioner-appellant. It is well settled that mandamus will not lie to compel the performance of acts which are illegal, contrary to public policy, or which tend to aid an unlawful purpose (*Cook v. Noble*, 181 Cal. 720, 721), and this court has repeatedly held that only specific legal rights are enforceable by mandamus, that the right sought to be enforced must be certain and clear, and that the writ will not issue in cases where the right is doubtful. (See *Sanson v. Barrios, et als.*, 63 Phil., 198, and cases cited.)

The judgment of the lower court is accordingly affirmed, and the petition for the issuance of the writ of mandamus is hereby denied, with costs against the petitioner-appellant.

So ordered.

Avanceña, C. J., Diaz, Moran, and Horrilleno, JJ., concur.

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