

JOHN GOKONGWEI, JR., PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION, SAN MIGUEL CORPORATION, ANDRES M. SORIANO, JOSE M. SORIANO, ENRIQUE ZOBEL, ANTONIO ROXAS, EMETERIO BUNAO...

G.R. No. 52129. April 21, 1980

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ANTONIO, J.:

In this petition for review, petitioner seeks to nullify and set aside the resolution en banc dated May 7, 1979 of respondent Securities and Exchange Commission in SEC Case No. 1375. sustaining the findings of the San Miguel Corporation's Board of Directors that petitioner is engaged in a business competitive with or antagonistic to that of the San Miguel Corporation and, therefore, ineligible for election as director, pursuant to Section 3, Article III of the amended by-laws. Petitioner alleges that the matter of petitioner's disqualification should not have been heard in view of the pendency of petitioner's motion for reconsideration with this Court; that when respondent Commission sustained the disqualification of petitioner, it failed to consider that private respondents are precluded from disqualifying petitioner because of the rule of *pari delicto*; and that the resolution of disqualification of the respondent Board of Directors was an "over exertion of corporate power" because by this act the afore-mentioned Board of Directors intended to perpetuate themselves in power. Considering the afore-mentioned allegations and the comments thereto, We find no merit in the petition.

Aside from the presumptive validity of the amended by-laws at the time the questioned resolution was rendered by respondent Securities and Exchange Commission, the Chief Justice and six (6) Justices of this Court had already promulgated their opinions that the validity of the amended by-laws insofar and only insofar as the parties herein are concerned, can no longer be relitigated on the basis of the "law of the case" doctrine and, therefore, the enforcement of the amended by-laws could not have been *ipso facto* stayed by the motion for reconsideration. Petitioner's allegation that respondent Commission (Securities and Exchange Commission) could not have validly sustained the resolution of the San Miguel Corporation Board because some members of the Board were also disqualified as they were situated like petitioner appears inapposite. The alleged disqualification of some members of the Board was never in issue during the hearing of the disqualification case, and petitioner has not submitted any evidence in support of his contention. Petitioner's assertion that the order of respondent Commission disqualifying him is based on evidence which are "at the most, contingent and flimsy" appears unsupported by the records. The order of respondent Commission was based principally on the affidavits of Nazario Avendano, Ruperto Sarandi, Jr., Fernando Constantino, Jose Picornell and Mabini Antonio and documentary evidence showing that petitioner is engaged in agricultural and poultry business competitive with that of San Miguel Corporation. Petitioner did not adduce any evidence to rebut the evidence of his disqualification. It is well-settled that findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of said agencies, or unless the afore-mentioned findings are not supported by substantial evidence (*Central Bank v. Cloribel*, 44 SCRA 307 [1972]).

WHEREFORE, in view of the foregoing, the Court resolves to DISMISS the petition for lack of merit.

SO ORDERED.

Barredo, Makasiar, Aquino, Abad Santos, and De Castro, JJ., concur.

Fernando, C.J., concurs in the result by virtue of the doctrine of the law of the case insofar as petitioner is concerned but leaves the principal legal question open if raised in an appropriate legal proceeding.

Teehankee, Jr., J., dissents in a separate opinion.

Concepcion Jr., Fernandez, and Guerrero. JJ., concurs in the dissent of Justice Teehankee,

Melencio-Herrera, J., took no part.

DISSENTING**TEEHANKEE, J.,**

The peremptory dismissal of the petition for review "for lack of merit" by an inconclusive vote of six (namely, Justices Barredo, Makasiar, Antonio, Aquino, Abad Santos and De Castro) to four (namely, Justices Teehankee, Concepcion Jr., Fernandez and Guerrero) is in disregard of the clear and express intendment and disposition of this Court in its decision of April 11, 1979 in the first action (of which the present case is but a sequel), a special civil action, viz, L-45911 involving exactly the same petitioner and respondents for "declaration of nullity of the amended by-laws" of respondent San Miguel Corporation which would disqualify petitioner from being elected to the board of directors of said respondent corporation, wherein the Court, while dismissing the petition by an inconclusive vote, expressly qualified that such dismissal was "without prejudice to the question of the actual disqualification of petitioner John Gokongwei, Jr. to run and if elected to sit as director of respondent San Miguel Corporation being decided, after a new and proper hearing by the Board of Directors of said corporation, whose decision shall be appealable to the respondent Securities and Exchange Commission deliberating and acting en banc, and ultimately to this Court. Unless disqualified in the manner herein provided, the prohibition in the aforementioned by-laws shall not apply to petitioner." [1]

The late Chief Justice Fred Ruiz Castro and the now Chief Justice Enrique M. Fernando reserved their votes, as follows:

"Chief Justice Fred Ruiz Castro reserved his vote on the validity of the amended by-laws, pending hearing by this Court on the applicability of section 13(5) of the Corporation Law to petitioner.

"Justice Fernando reserved his vote on the validity of subject amendment to the by-laws but otherwise concurs in the result." [2]

The present vote of dismissal would be by an even vote of four to four Justices had Justices Aquino and De Castro maintained here their abstentions in the first case. Following the usual procedure of the Court of granting due course where the Court is closely or evenly divided, the petition at bar should be given due course, so that the Court may study the case at length and try to reach a decisive vote, unlike in the first case which ended in a dismissal for lack of necessary votes which, as we then stated, "is of no doctrinal value and does not in any manner resolve the issue of the validity of the questioned amended by-laws nor foreclose the same." [3]

(Justice Aquino took no part in the decision of April 11, 1979 and the subsequent Resolution of May 8, 1979 which denied for lack of necessary votes petitioner's urgent motion for a restraining order against his disqualification in the SMC elections to be held that very afternoon, which in our view was an unjustified refusal

of this Court "to enforce its unanimous twelve-member decision of April 11, 1979 that petitioner could run for and sit, if elected, on the SMC board until it shall have taken a second look at petitioner's foreseen disqualification under the questioned by-laws amendment." [4] The Chief Justice [then Acting Chief Justice] voted "to issue a restraining order in accordance with his reservation in the decision of this petition on the question of the validity of the assailed amendment to the by-laws." Justice Aquino likewise took no part in the Resolution of November 27, 1979 which denied for lack of necessary votes petitioner's motion for reconsideration of the decision. Justice De Castro, who initially took part in the decision and voted for dismissal of the petition and likewise for denial of petitioner's urgent motion for restraining order in the Resolution of May 8, 1979, subsequently abstained from taking part in the Resolution of November 27, 1979 denying reconsideration of the decision. Mme. Justice Amuerfina Melencio Herrera abstained completely in that case and in the present case.)

In consonance with the foregoing considerations and the reasons stated in our separate opinion of April 1, 1979 in the first case, our separate statements in the Resolutions of May 8, 1979 and November 27, 1979, we vote to grant due course to the petition.

The present petition is precisely by way of appeal for a review of respondent commission's lightning Resolution of May 7, 1979 sustaining respondent SMC board's unilateral action of disqualifying petitioner by the simple expedient of declaring him to be engaged in a "competitive or antagonistic business." The petition raises questions of procedural due process, viz, that petitioner was not given "the new and proper hearing by the board of directors of said corporation, whose decision shall be appealable to the respondent Securities and Exchange Commission deliberating and acting en banc, and ultimately to this Court," as ordered in the decision of April 11, 1979, and questions of substantive due process as well- viz, that the questioned amended by-laws are oppressive, arbitrary and unreasonable and specifically tailored to discriminate against petitioner and deprive him of his vested substantial rights as a substantial SMC stockholder.

More, and contrary to the statement of the main resolution that "the alleged disqualification of some members of the Board was never in issue during the hearing of the disqualification case," the petition raises precisely the question of *pari delicto* and equal application of the questioned by-law amendment to other board members who should likewise be disqualified for being engaged in "competitive or antagonistic business."

Furthermore, the petition involves the issue of the application of Section 13(5) of the Corporation Law on which question the late Chief Justice Castro, as per his reserved vote quoted above in the decision of April 11, 1979, precisely called for a "hearing by this Court¹ on its applicability. Justice Barredo had in his written vote of April 3, 1979 expressly voted: "Considering that the issue regarding the application of Section 13(5) has not been fully discussed by the parties, and it is an issue that is of utmost importance, what with its transcendental implications, apart from being unprecedented, my vote is to leave the issue open x x x." [5]

By all standards and the Court's own guidelines that a petition which questions an appealed decision of the Securities and Exchange Commission on the ground that it "has decided a question of substance not theretofore determined by the Supreme Court," [6] the petition should be granted due course and the justiciable and "transcendental issues raised therein should, after full briefs and due hearing, be squarely addressed and conclusively determined by the Court.

[1] Pages 59-60 of the decision in I.-45911

[2] Page 60. *idem*.

- [3] Page 6 of Joint Separate Opinion of Justices Teehankee, Concepcion Jr., Fernandez and Guerrero in L-45911.
- [4] Resolution of May 8, 1979 in L-4591 1. at page 2.
- [5] Resolution of Nov. 1979 in L-45911, at page 7
- [6] Rule 43, Section 3.

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