

DATU TAGORANAO BENITO, PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION AND JAMIATUL PHILIPPINE-AL ISLAMIA, INC., RESPONDENTS.

G.R. No. 56655. July 25, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

On February 6, 1959, the Articles of Incorporation of respondent Jamiatul Philippine-Al Islamia, Inc. (originally Kamilol Islam Institute, Inc.) were filed with the Securities and Exchange Commission (SEC) and were approved on December 14, 1962. The corporation had an authorized capital stock of P200,000.00 divided into 20,000 shares at a par value of P10.00 each. Of the authorized capital stock, 8,058 shares worth P80,580.00 were subscribed and fully paid for. Herein petitioner Datu Tagoranao Benito subscribed to 460 shares worth P4,600.00.

On October 28, 1975, the respondent corporation filed a certificate of increase of its capital stock from P200,000.00 to P1,000,000.00. It was shown in said certificate that P191,560.00 worth of shares were represented in the stockholders' meeting held on November 25, 1975 at which time the increase was approved. Thus, P110,980.00 worth of shares were subsequently issued by the corporation from the unissued portion of the authorized capital stock of P200,000.00. Of the increased capital stock of P1,000,000.00, P160,000.00 worth of shares were subscribed by Mrs. Fatima A. Ramos, Mrs. Tarhata A. Lucman and Mrs. Moki-in Alonto.

On November 18, 1976, petitioner Datu Tagoranao filed with respondent Securities and Exchange Commission a petition alleging that the additional issue (worth P110,980.00) of previously subscribed shares of the corporation was made in violation of his pre-emptive right to said additional issue and that the increase in the authorized capital stock of the corporation from P200,000.00 to P1,000,000.00 was illegal considering that the stockholders of record were not notified of the meeting wherein the proposed increase was in the agenda. Petitioner prayed that the additional issue of shares of previously authorized capital stock as well as the shares issued from the increase in capital stock of respondent corporation be cancelled; that the secretary of respondent corporation be ordered to register the 2,540 shares acquired by him (petitioner) from Domocao Alonto and Moki-in Alonto; and that the corporation be ordered to render an accounting of funds to the stockholders.

In their answer, respondents denied the material allegations of the petition and, by way of special defense, claimed that petitioner has no cause of action and that the stock certificates covering the shares alleged to have been sold to petitioner were only given to him as collateral for the loan of Domocao Alonto and Moki-in Alonto.

On July 11, 1980, Hearing Officer Ledor E. Macalalag of the Securities and Exchange Commission, after due proceedings, rendered a decision which was affirmed by the Commission En Banc during its executive session held on March 9, 1981, as follows:

"RESOLVED, That the decision of the Hearing Officer in SEC Case No. 1392, dated July 11, 1980, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing considerations, this Commission hereby rules: (a) That the issuance

by the corporation of its unissued shares was validly made and was not subject to the pre-emptive rights of stockholders, including the petitioner, herein; To direct as it hereby directs, the respondent corporation to immediately cancel Certificates of Stock Nos. 216, 223, 302, all in the name of Domocao Alonto, and Certificate of Stock No. 217, in the name of Moki-in Alonto, upon their presentation by the petitioner and to issue new certificates corresponding thereto in the name of petitioner herein; (d) To direct, as it hereby directs, respondent corporation to religiously comply with the requirement of filing annual financial statements under pain of a more drastic-action; (e) To declare, as it hereby declares, as irregular, the election of the nine (9) members of the Board of Trustees of respondent corporation on October 30, 1976, for which reason, respondent corporation is hereby ordered to call a stockholders' meeting to elect a new set of five (5) members of the Board of Trustees, unless in the meantime the said number is accordingly increased and the requirement of law to make such increase effective have been complied with. It is understood that the said-stockholders' meeting be called within thirty (30) days from the time petitioner shall have subscribed to the increased capitalization.

be, as the same is hereby AFFIRMED, the same being in accordance with law and the facts of the case." (pp. 28-29, Rollo)

Hence, this petition for review by way of appeal from the aforementioned decision of the Securities and Exchange Commission, petitioner contending that (1) the issuance of the 11,098 shares without the consent of the stockholders or of the Board of Directors, and in the absence of consideration, is null and void; (2) the increase in the authorized capital stock from P200,000.00 to P1,000,000.00 without the consent or express waiver of the stockholders, is null and void; (3) he is entitled to attorneys' fees, damages and expenses of litigation in filing this suit against the directors of respondent corporation.

We are not persuaded. As aptly stated by the Securities and Exchange Commission in its decision:

...

"... the questioned issuance of the unsubscribed portion of the capital stock worth P110,980.00 is not invalid even if assuming that it was made without notice to the stockholders as claimed by petitioner. The power to issue shares of stocks in a corporation is lodged in the board of directors and no stockholders' meeting is necessary to consider it because additional issuance of shares of stocks does not need approval of the stockholders. The by-laws of the corporation itself states that the Board of Trustees shall, in accordance with law, provide for the issue and transfer of shares of stock of the Institute and shall prescribe the form of the certificate of stock of the Institute (Art. V, Sec. 1).

"Petitioner bewails the fact that in view of the lack of notice to him of such subsequent issuance, he was not able to exercise his right of pre-emption over the unissued shares. However, the general rule is that pre-emptive right is recognized only with respect to new issue of shares, and not with respect to additional issues of originally authorized shares. This is on the theory that when a corporation at its inception offers its first shares, it is presumed to have offered all of those which it is authorized to issue. An original subscriber is deemed to have taken his shares knowing that they form a definite proportionate part of the whole number of authorized shares. When the shares left unsubscribed are later reoffered, he cannot therefore claim a dilution of interest. (Campos and Lopez-Campos Selected Notes and Cases on Corporation Law, p. 855, citing *Yasik v. Wachtel*, 25 Del. Ch. 247, 17A. 2d 308 (1941))." (pp. 33-34, Rollo)

With respect to the claim that the increase in the authorized capital stock was without the consent, expressed or implied, of the stockholders, it was the finding of the Securities and Exchange Commission that a stockholders' meeting was held on November 25, 1975, presided over by Mr. Ahmad Domocao Alonto, Chairman of the Board of Trustees and, among the many items taken up then were the change of name of the corporation from Kamilol Islam Institute Inc. to Jamiatul Philippine-Al Islamia, Inc., the increase of its capital stock from P200,000.00 to

P1,000,000.00, and the increase of the number of its Board of Trustees from five to nine. "Despite the insistence of petitioner, this Commission is inclined to believe that there was a stockholders' meeting on November 25, 1975 which approved the increase. The petitioner had not sufficiently overcome the evidence of respondents that such meeting was in fact held. What petitioner successfully proved, however, was the fact that he was not notified of said meeting and that he never attended the same as he was out of the country at the time. The documentary evidence of petitioner conclusively proved that he was attending the Mecca pilgrimage when the meeting was held on November 25, 1975 (Exh. 'Q,' 'Q-14,' 'R,' 'S' and 'S-f'). While petitioner doubts the authenticity of the alleged minutes of the proceedings (Exh. '4'), the Commission notes with significance that said minutes contain numerous details of various items taken up therein that would negate any claim that it was not authentic. Another thing that petitioner was able to disprove was the allegation in the certificate of increase (Exh. 'E-I') that all stockholders who did not subscribe to the increase of capital stock have waived their pre-emptive right to do so. As far as the petitioner is concerned, he had not waived his pre-emptive right to subscribe as he could not have done so for the reason that he was not present at the meeting and had not executed a waiver, thereof. Not having waived such right and for reasons of equity, he may still be allowed to subscribe to the increased capital stock proportionate to his present shareholdings." (pp. 36-37, Rollo)

Well-settled is the rule that the findings of facts 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 aforementioned findings are not supported by substantial evidence (*Gokongwei, Jr. vs. SEC*, 97 SCRA 78). In a long string of cases, the Supreme Court has consistently adhered to the rule that decisions of administrative officers are not to be disturbed by the courts except when the former have acted without or in excess of their jurisdiction or with grave abuse of discretion (*Sichangco vs. Board of Commissioners of Immigration*, 94 SCRA 61). Thus, in the case of *Deluao vs. Casteel* (L-21906, Dec. 24, 1968, 26 SCRA 475, 496, citing *Pajo vs. Ago, et al.*, L-15414, June 30, 1960) and *Genitano vs. Secretary of Agriculture and Natural Resources, et al.* (L-21167, March 31, 1966), the Supreme Court held that:

"... Findings of fact by an administrative board or official, following a hearing, are binding upon the courts and will not be disturbed except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. ..."

ACCORDINGLY, this petition is hereby dismissed for lack of merit.

SO ORDERED.

Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Teehankee (Chairman), concurs in the result.

Melencio-Herrera, and Vasquez, JJ., are on leave.

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