Supreme Court E-Library

SECOND DIVISION

[G.R. No. 76801. August 11, 1995]

LOPEZ REALTY, INC., AND ASUNCION LOPEZ GONZALES, *petitioners, vs.* FLORENTINA FONTECHA, ET AL., AND THE NATIONAL LABOR RELATIONS COMMISSION, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; APPEAL; ISSUES CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.**— Indeed, it would be offensive to the basic rules of fair play and justice to allow petitioners to raise questions which have not been passed upon by the labor arbiter and the public respondent NLRC. It is well-settled that questions not raised in the lower courts cannot be raised for the first time on appeal. Hence, petitioners may not invoke any other ground, other than those it specified at the labor arbiter level, to impugn the validity of the subject resolutions.

2. **COMMERCIAL LAW; CORPORATION LAW; CORPORATION; SHOULD ACT IN THE MANNER AND WITHIN THE FORMALITIES PRESCRIBED BY ITS CHARTER OR BY THE GENERAL LAW.**— The general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed by its charter or by the general law. Thus, directors must act as a body in a meeting called pursuant to the law or the corporation's by-laws, otherwise, any action taken therein may be questioned by any objecting director or shareholder.

3. **ID.; ID.; ID.; ACTION OF THE BOARD OF DIRECTORS WITHOUT NOTICE MAY BE RATIFIED.**— Be that as it may, jurisprudence tells us that an action of the board of directors during a meeting, which was illegal for lack of notice, may be ratified either expressly, by the action of the

Supreme Court E-Library

directors in subsequent legal meeting, or impliedly, by the corporation's subsequent course of conduct.

4. **ID.; ID.; ID.; ID.; BOARD RESOLUTION GRANTING GRATUITY PAY WITHOUT NOTICE TO MAJOR STOCKHOLDER; RATIFIED WHERE SAID MAJOR STOCKHOLDER SIGNED CASH VOUCHERS FOR GRATUITY PAY.**— In the case at bench, it was established that petitioner corporation did not issue any resolution revoking nor nullifying the board resolutions granting gratuity pay to private respondents. Instead, they paid the gratuity pay, particularly, the first two (2) installments thereof, of private respondents Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista. Despite the alleged lack of notice to petitioner Asuncion Lopez Gonzales at that time the assailed resolutions were passed, we can glean from the records that she was aware of the corporation's obligation under the said resolutions. More importantly, she acquiesced thereto. As pointed out by private respondents, petitioner Asuncion Lopez Gonzales affixed her signature on Cash Voucher Nos. 81-10-510 and 81-10-506, both dated October 15, 1981, evidencing the 2nd installment of the gratuity pay of private respondents Mila Refuerzo and Florentina Fontecha. We hold, therefore, that the conduct of petitioners after the passage of resolutions dated August 17, 1981 and September 1, 1981, had estopped them from assailing the validity of said board resolutions.

5. **ID.; ID.; ID.; *ULTRA VIRES*, DEFINED.**— In legal parlance, "*ultra vires*" act refers to one which is not within the corporate powers conferred by the Corporation Code or articles of incorporation or not necessary or incidental in the exercise of the powers so conferred.

6. **ID.; ID.; ID.; RESOLUTION GRANTING GRATUITY TO EMPLOYEES, NOT *ULTRA VIRES*.**— The assailed resolutions before us cover a subject which concerns the benefit and welfare of the company's employees. To stress, providing gratuity pay for its employees is one of the express powers of the corporation under the Corporation Code, hence,

Supreme Court E-Library

petitioners cannot invoke the doctrine of *ultra vires* to avoid any liability arising from the issuance the subject resolutions.

7. **ID.; ID.; ID.; ID.; NEED NOT BE APPROVED IN THE ANNUAL STOCKHOLDERS' MEETING; CASE AT BENCH.**— Petitioners try to convince us that the subject resolutions had no force and effect in view of the non-approval thereof during the Annual Stockholders' Meeting held on March 1, 1982. To strengthen their position, petitioners cite Section 28 1/2 of the Corporation Law (Section 40 of the Corporation Code). We are not persuaded. The cited provision is not applicable to the case at bench as it refers to the sale, lease, exchange or disposition of all or substantially all of the corporation's assets, including its goodwill. In such a case, the action taken by the board of directors requires the authorization of the stockholders on record. It will be observed that, except for Arturo Lopez, the stockholders of petitioner corporation also sit as members of the board of directors. Under the circumstances in field, it will be illogical and superfluous to require the stockholders' approval of the subject resolutions. Thus, even without the stockholders' approval of the subject resolutions, petitioners are still liable to pay private respondents' gratuity pay.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Roberto B. Capoon, Jr. for private respondents.

D E C I S I O N

PUNO, *J.*:

The controversy at bench arose from a complaint filed by private respondents,[1] namely, Florentina Fontecha, Mila

---

[1] Private respondents' basic monthly salary and date of employment with said company are as follows:

Supreme Court E-Library

Refuerzo, Marcial Mamaril, Perfecto Bautista, Edward Mamaril, Marissa Pascual and Allan Pimentel, against their employer, Lopez Realty Incorporated (petitioner) and its majority stockholder, Asuncion Lopez Gonzales, for alleged non-payment of their gratuity pay and other benefits.[2] The case was docketed as NLRC-NCR Case No. 2-2176-82.

Lopez Realty, Inc., is a corporation engaged in real estate business, while petitioner Asuncion Lopez Gonzales is one of its majority shareholders. Her interest in the company *vis-a-vis* the other shareholders is as follows:

1.	Asuncion Lopez Gonzales	7,831 shares
2.	Teresita Lopez Marquez	7,830 shares
3.	Arturo F. Lopez	7,830 shares
4.	Rosendo de Leon	4 shares
5.	Benjamin Bernardino	1 share
6.	Leo Rivera	1 share

Except for Arturo F. Lopez, the rest of the shareholders also sit as members of the Board of Directors.

As found by the labor arbiter,[3] sometime in 1978, Arturo Lopez submitted a proposal relative to the distribution of certain assets of petitioner corporation among its three (3) main shareholders. The proposal had three (3) aspects, *viz*: (1) the sale of assets of the company to pay for its obligations;

Employee	Date Employed	Latest Salary
Florentina U. Fontecha	10-03-68	P1,090.00
Mila C. Refuerzo	08-02-68	930.00
Marcial C. Mamaril	09-01-51	560.00
Perfecto Bautista	12-01-54	540.00
Edward S. Mamaril	10-01-80	540.00
Marissa S. Pascual	02-01-81	540.00
Allan M. Pimentel	03-01-81	540.00

[2] The case was docketed as NLRC-NCR Case No. 2-2176-82.

[3] See Decision, dated July 23, 1984, *Rollo*, pp. 20-35.

Supreme Court E-Library

(2) the transfer of certain assets of the company to its three (3) main shareholders, while some other assets shall remain with the company; and (3) ***the reduction of employees with provision for their gratuity pay.*** The proposal was deliberated upon and approved in a special meeting of the board of directors held on April 17, 1978.

It appears that petitioner corporation approved two (2) resolutions providing for the gratuity pay of its employees, *viz*: (a) ***Resolution No. 6, Series of 1980,*** passed by the stockholders in a special meeting held on September 8, 1980, resolving to set aside, twice a year, a certain sum of money for the ***gratuity pay*** of its ***retiring*** employees and to create a Gratuity Fund for the said contingency; and (b) ***Resolution No. 10, Series of 1980,*** setting aside the amount of P157,750.00 as Gratuity Fund covering the period from 1950 up to 1980.

Meanwhile, on July 28, 1981, board member and majority stockholder Teresita Lopez Marquez died.

On **August 17, 1981,** except for Asuncion Lopez Gonzales who was then abroad, the remaining members of the Board of Directors, namely: ***Rosendo de Leon, Benjamin Bernardino, and Leo Rivera,*** convened a special meeting and passed a resolution which reads:

> "Resolved, as it is hereby resolved that the gratuity (pay) of the employees be given as follows:
>
> (a) Those who will be ***laid off*** be given the full amount of gratuity;
>
> (b) Those who will be ***retained*** will receive ***25% of their gratuity (pay) due on September 1, 1981, and another 25% on January 1, 1982, and 50% to be retained by the office in the meantime.***" (Italics supplied)

Private respondents were the retained employees of petitioner corporation. In a letter, dated August 31, 1981,

Supreme Court E-Library

private respondents requested for the full payment of their gratuity pay. Their request was granted in a **special meeting held on September 1, 1981.** The relevant portion of the minutes of the said board meeting reads:

"In view of the request of the employees contained in the letter dated August 31, 1981, it was also decided that ***all those remaining employees will receive another 25% (of their gratuity) on or before October 15, 1981 and another 25% on or before the end of November, 1981 of their respective gratuity.***"

At that time, however, petitioner Asuncion Lopez Gonzales was still abroad. Allegedly, while she was still out of the country, she sent a cablegram to the corporation, objecting to certain matters taken up by the board in her absence, such as the sale of some of the assets of the corporation. Upon her return, she filed a derivative suit with the Securities and Exchange Commission (SEC) against majority shareholder Arturo F. Lopez.

Notwithstanding the "corporate squabble" between petitioner Asuncion Lopez Gonzales and Arturo Lopez, the first two (2) installments of the gratuity pay of private respondents Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista were paid by petitioner corporation.

Also, petitioner corporation had prepared the cash vouchers and checks for the third installments of gratuity pay of said private respondents (Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista). For some reason, said vouchers were cancelled by petitioner Asuncion Lopez Gonzales.

Likewise, the first, second and third installments of gratuity pay of the rest of private respondents, particularly, Edward Mamaril, Marissa Pascual and Allan Pimentel, were prepared but cancelled by petitioner Asuncion Lopez Gonzales. Despite

Supreme Court E-Library

private respondents' repeated demands for their gratuity pay, petitioner corporation refused to pay the same.[4]

On July 23, 1984, Labor Arbiter Raymundo R. Valenzuela rendered judgment in favor of private respondents.[5]

Petitioners appealed the adverse ruling of the labor arbiter to public respondent National Labor Relations Commission. The appeal focused on the alleged non-ratification and non-approval of the assailed August 17, 1981 and September 1, 1981 Board Resolutions during the Annual Stockholders' Meeting held on March 1, 1982. Petitioners further insisted that the payment of the gratuity to some of the private respondents was a mere "mistake" on the part of petitioner corporation since, pursuant to Resolution No. 6, dated September 8, 1980, and Resolution No. 10, dated October 6, 1980, said gratuity pay should be given only upon the employees' retirement.

On November 20, 1985, public respondent, through its Second Division, dismissed the appeal for lack of merit, the pertinent portion of which states:[6]

"We cannot agree with the contention of respondents (petitioners) that the Labor Arbiter *a quo* committed abuse of discretion in his decision.

"Respondents' (petitioners') contention that the two (2) resolutions dated 17 August 1981 and 1 September 1981 x x x which were not approved in the annual stockholders meeting had no force and effect, deserves scant consideration. The records show that the stockholders did not revoke nor nullify these resolutions granting gratuities to complainants.

---

[4] Decision, dated July 23, 1984, *Rollo*, pp. 20-35.

[5] *Rollo*, pp. 20-35.

[6] *Rollo*, p. 51.

Supreme Court E-Library

"On record, it appears that the said resolutions arose from the legitimate creation of the Board of Directors who steered the corporate affairs of the corporation. x x x

"Respondents' (petitioners') allegation that the three (3) complainants, Mila E. Refuerzo, Marissa S. Pascual and Edward Mamaril, who had resigned after filing the complaint on February 8, 1992, were precluded to (sic) receive gratuity because the said resolutions referred to only *retiring* employee could not be given credence. A reading of Resolutions dated 17 August 1981 and 1 September 1981 disclosed that there were periods mentioned for the payment of complainants' gratuities. This disproves respondents' argument allowing gratuities upon retirement of employees. Additionally, the proposed distribution of assets (Exh. C-l) filed by Mr. Arturo F. Lopez also made mention of gratuity pay, 'x x x (wherein) *an employee who desires to resign from LRI will be given the gratuity pay he or she earned.*' (Italics supplied) Let us be reminded, too, that complainants' resignation was not voluntary but it was pressurized (sic) due to 'power struggle' which is evident between Arturo Lopez and Asuncion Gonzales.

"The respondents' (petitioners') contention of a mistake to have been committed in granting the first two (2) installments of gratuities to complainants Perfecto Bautista, Florentina Fontecha, Marcial Mamaril and Mila Refuerzo, (has) no legal leg to stand on. The record is bereft of any evidence that the Board of Directors had passed a resolution nor is there any minutes of whatever nature proving mistakes in the award of damages (sic).

"With regard to the award of service incentive leave and others, the Commission finds no cogent reason to disturb the appealed decision.

"We affirm.

"WHEREFORE, let the appealed decision be, as it is hereby, AFFIRMED and let the instant appeal (be) dismissed for lack of merit.

"SO ORDERED."

Supreme Court E-Library

Petitioners reconsidered.[7] In their motion for reconsideration, petitioners assailed the validity of the board resolutions passed on August 17, 1981 and September 1, 1981, respectively, and claimed, for the first time, that petitioner Asuncion Lopez Gonzales was not notified of the special board meetings held on said dates. The motion for reconsideration was denied by the Second Division on July 24, 1986.

On September 4, 1986, petitioners filed another motion for reconsideration. Again, the motion was denied by public respondent in a Minute Resolution dated November 19, 1986.[8]

Hence, the petition. As prayed for, we issued a Temporary Restraining Order,[9] enjoining public respondent from enforcing or executing the Resolution, dated November 20, 1986 (sic), in NLRC-NCR-2-2176-82.[10]

The sole issue is whether or not public respondent acted with grave abuse of discretion in holding that private respondents are entitled to receive their gratuity pay under the assailed board resolutions dated August 17, 1981 and September 1, 1981.

Petitioners contend that the board resolutions passed on August 17, 1981 and September 1, 1981, granting gratuity pay to their retained employees, are *ultra vires* on the ground

---

[7] See Annex "E" of Petition, *Rollo*, pp. 56-61.

[8] Annex "A" of Petition, *Rollo*, p. 19.

[9] Resolution, dated February 9, 1987, *Rollo*, p. 72.

[10] On November 20, 1985, the National Labor Relations Commission promulgated its Resolution, dismissing the appeal of petitioners, in NLRC-NCR-2-2176-82, for lack of merit. The November 20, 1986 Resolution alluded to refers to the NLRC notice re: November 19, 1986 Resolution, dismissing the second motion for reconsideration of petitioners, dated September 4, 1986; *Rollo*, p. 19.

Supreme Court E-Library

that petitioner Asuncion Lopez Gonzales was not duly notified of the said special meetings. They aver, further, that said board resolutions were not ratified by the stockholders of the corporation pursuant to Section 28 1/2 of the Corporation Law (Section 40 of the Corporation Code). They also insist that the gratuity pay must be given only to the retiring employees, to the exclusion of the retained employees or those who voluntarily resigned from their posts.

At the outset, we note that petitioner's allegation on lack of notice to petitioner Asuncion Lopez Gonzales was raised for the first time in their motion for reconsideration filed before public respondent National Labor Relations Commission, or after said public respondent had affirmed the decision of the labor arbiter. To stress, in their appeal before the NLRC, petitioners never raised the issue of lack of notice to Asuncion Lopez Gonzales. The appeal dealt with (a) the failure of the stockholders to ratify the assailed resolutions and (b) the alleged "mistake" committed by petitioner corporation in giving the gratuity pay to some of its employees who are yet to retire from employment.

In their Comment,[11] private respondents maintain that the new ground of lack of notice was not raised before the labor arbiter, hence, petitioners are barred from raising the same on appeal. Private respondents claim, further, that such failure on the part of petitioners, had deprived them the opportunity to present evidence that, in a subsequent special board meeting held on September 29, 1981, the subject resolution dated September 1, 1981, was unanimously approved by the board of directors of petitioner corporation, including petitioner Asuncion Lopez Gonzales.[12]

---

[11] *Rollo*, pp. 98-113.

[12] *Ibid.*, p. 180.

Supreme Court E-Library

Indeed, it would be offensive to the basic rules of fair play and justice to allow petitioners to raise questions which have not been passed upon by the labor arbiter and the public respondent NLRC. It is well settled that questions not raised in the lower courts cannot be raised for the first time on appeal.[13] Hence, petitioners may not invoke any other ground, other than those it specified at the labor arbiter level, to impugn the validity of the subject resolutions.

We now come to petitioners' argument that the resolutions passed by the board of directors during the special meetings on August 17, 1981, and September 1, 1981, *were ultra vires* for lack of notice.

The general rule is that a corporation, through its board of directors, should act in the manner and within the formalities, if any, prescribed by its charter or by the general law.[14] Thus, directors must act as a body in a meeting called pursuant to the law or the corporation's by-laws, otherwise, any action taken therein may be questioned by any objecting director or shareholder.[15]

Be that as it may, jurisprudence[16] tells us that an action of the board of directors during a meeting, which was illegal for lack of notice, may be ratified either expressly, by the action of the directors in subsequent legal meeting, or impliedly, by the corporation's subsequent course of conduct. Thus, in one case,[17] it was held:

---

[13] Anchuelo *v.* IAC, G.R. No. 71391, January 29, 1987, 147 SCRA 434.

[14] 19 C.J.S. 432-444.

[15] cf. Section 53 of the Corporation Code.

[16] Johnson *v.* Community Development Corp., 222 N.W. 2d 847.

[17] *Ibid.*

Supreme Court E-Library

". . . In 2 Fletcher, Cyclopedia of the Law of Private Corporations (Perm. Ed.) Sec. 429, at page 290, it is stated:

> 'Thus, acts of directors at a meeting which was illegal because of want of notice may be ratified by the directors at a subsequent legal meeting, or by the corporation's course of conduct . . .'

"Fletcher, *supra*, further states in Sec. 762, at page 1073-1074:

> 'Ratification by directors may be by an express resolution or vote to that effect, or it may be implied from adoption of the act, acceptance or acquiescence. Ratification may be effected by a resolution or vote of the board of directors expressly ratifying previous acts either of corporate officers or agents; but it is not necessary, ordinarily, to show a meeting and formal action by the board of directors in order to establish a ratification.'

"In American Casualty Co., *v.* Dakota Tractor and Equipment Co., 234 F. Supp. 606, 611 (D.N.D. 1964), the court stated:

> 'Moreover, the unauthorized acts of an officer of a corporation may be ratified by the corporation by conduct implying approval and adoption of the act in question. Such ratification may be express or may be inferred from silence and inaction.'

In the case at bench, it was established that petitioner corporation did not issue any resolution revoking nor nullifying the board resolutions granting gratuity pay to private respondents. Instead, they paid the gratuity pay, particularly, the first two (2) installments thereof, of private respondents Florentina Fontecha, Mila Refuerzo, Marcial Mamaril and Perfecto Bautista.

Despite the alleged lack of notice to petitioner Asuncion Lopez Gonzales at that time the assailed resolutions were passed, we can glean from the records that she was aware of the corporation's obligation under the said resolutions. More importantly, she acquiesced thereto. As pointed out by private

Supreme Court E-Library

respondents, petitioner Asuncion Lopez Gonzales affixed her signature on Cash Voucher Nos. 81-10-510 and 81-10-506, both dated October 15, 1981, evidencing the 2nd installment of the gratuity pay of private respondents Mila Refuerzo and Florentina Fontecha.[18]

We hold, therefore, that the conduct of petitioners after the passage of resolutions dated August 17, 1981 and September 1, 1981, had estopped them from assailing the validity of said board resolutions.

Assuming, *arguendo*, that there was no notice given to Asuncion Lopez Gonzales during the special meetings held on August 17, 1981 and September 1, 1981, it is erroneous to state that the resolutions passed by the board during the said meetings were *ultra vires*. In legal parlance, "*ultra vires*" act refers to one which is not within the corporate powers conferred by the Corporation Code or articles of incorporation or not necessary or incidental in the exercise of the powers so conferred.[19]

The assailed resolutions before us cover a subject which concerns the benefit and welfare of the company's employees. To stress, providing gratuity pay for its employees is one of the express powers of the corporation under the Corporation Code, hence, petitioners cannot invoke the doctrine of *ultra*

---

[18] *Rollo*, p. 109.

[19] Section 45 of the Corporation Code provides:

"Sec. 45. ***Ultra vires*** acts of corporation. - No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred."

Supreme Court E-Library

vires to avoid any liability arising from the issuance the subject resolutions.[20]

We reject petitioners' allegation that private respondents, namely, Mila Refuerzo, Marissa Pascual and Edward Mamaril who resigned from petitioner corporation after the filing of the case, are precluded from receiving their gratuity pay. Pursuant to board resolutions dated August 17, 1981 and September 1, 1981, respectively, petitioner corporation obliged itself to give the gratuity pay of its retained employees in four (4) installments: on September 1, 1981; October 15, 1981; November, 1981; and January 1, 1982. Hence, at the time the aforenamed private respondents tendered their resignation, the aforementioned private respondents were already entitled to receive their gratuity pay.

Petitioners try to convince us that the subject resolutions had no force and effect in view of the non-approval thereof during the Annual Stockholders' Meeting held on March 1, 1982. To strengthen their position, petitioners cite Section 28 1/2 of the Corporation Law (Section 40 of the Corporation Code). We are not persuaded.

The cited provision is not applicable to the case at bench as it refers to the sale, lease, exchange or disposition of all or substantially all of the corporation's assets, including its goodwill. In such a case, the action taken by the board of directors requires the authorization of the stockholders on record.

It will be observed that, except for Arturo Lopez, the stockholders of petitioner corporation also sit as members of the board of directors. Under the circumstances in field, it

---

[20] Section 36 (10) of the Corporation Code provides, *inter alia*, that a corporation has the power and capacity "to establish pension, retirement and other plans for the benefit of its directors, trustees, officers and employees."

Supreme Court E-Library

will be illogical and superfluous to require the stockholders' approval of the subject resolutions. Thus, even without the stockholders' approval of the subject resolutions, petitioners are still liable to pay private respondents' gratuity pay.

IN VIEW WHEREOF, the instant petition is DISMISSED for lack of merit and the temporary restraining order we issued on February 9, 1987 is LIFTED. Accordingly, the assailed resolution of the National Labor Relations Commission in NLRC-NCR-2-2176-82 is AFFIRMED. This decision is immediately executory. Costs against petitioners.

SO ORDERED.

Narvasa, C.J. (Chairman), Regalado, Mendoza, and *Francisco, JJ.*, concur.

THIRD DIVISION

[G.R. No. 94979. August 11, 1995]

ALFONSO GABALDON CO, *petitioner, vs.* THE HON. COURT OF APPEALS and ORIENTAL ASSURANCE CORPORATION, *respondents.*[1]

---

[1] The title has been corrected to its present form as the petition for review erroneously carried the title of the case as docketed in the Court of Appeals, thus: "CARMEN SOCO, joint by her husband, LORENZO ONG, Plaintiffs-Appellees, *versus* JESUS Y. GO, doing business under the style 'GOJESCO' and ORIENTAL ASSURANCE CORPORATION, Defendants-Appellants. ORIENTAL ASSURANCE CORPORATION, Third-Party Plaintiff-Appellee, *versus* ALFONSO GABALDON CO, ET AL., Third-Party Defendants-Appellants."