

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **20 November 2019** which reads as follows:*

“G.R. No. 207594 (Sto. Cristo Catholic School, Inc., Msgr. Michael Feliciano I. Veneracion,¹ Nestor B. Bote, Cely L. Caballero, Danilo Q. Padolina, Fr. Elmer Villamayor v. Msgr. Jesus Estonilo and Gregoria Bautista). – This resolves the Petition for Review on *Certiorari*² assailing the Decision³ dated October 2, 2012 of the Court of Appeals (CA) which denied the petition for review filed therewith and the Resolution⁴ dated June 6, 2013 denying the motion for reconsideration in CA-G.R. SP No. 116858.

The Antecedents

Nestor B. Bote (Bote), Danilo Q. Padolina (Padolina),⁵ Cely L. Caballero (Caballero), Sr. Belle Benitez, Msgr. Michael Feliciano I. Veneracion (Msgr. Veneracion), Fr. Elmer Villamayor (Fr. Villamayor) and Fr. Eliezer M. Navarro (collectively, Bote Group) filed a Petition⁶ before the Securities and Exchange Commission (SEC) for the voluntary dissolution of the Sto. Cristo Catholic School, Inc. (Sto. Cristo), a non-stock corporation organized under Philippine laws for the purpose of operating a primary and secondary school.

The Bote Group claimed that they comprised the majority of the members of the Board of Trustees of Sto. Cristo and constituted more than two-thirds of its entire membership. They also averred that Msgr. Jesus B. Estonilo and Gregoria Bautista (respondents) had taken control of Sto. Cristo creating an unauthorized Board of Trustees which was

¹ “Mike Veneracion” in some parts of the records.

² *Rollo*, pp. 3-22.

³ *Id.* at 27-34; penned by Associate Justice Danton Q. Bueser with Associate Justices Amelita G. Tolentino and Ramon R. Garcia, concurring.

⁴ *Id.* at 36-37.

⁵ Padolino in some parts of the records.

⁶ *Rollo*, pp. 40-48.

prejudicial to the interest of Sto. Cristo. It further insisted that the dissolution of the corporate existence and the closure of Sto. Cristo had been approved by at least two-thirds of its membership in a meeting held on October 8, 2004.

In their Answer with Motion to Dismiss,⁷ respondents contended that they were among the legitimate members of Sto. Cristo's Board of Trustees. They also stated that the Board of Trustees did not approve the dissolution, and Bote, Caballero and Padolina had no personality to file the petition since they were no longer members of the Board of Trustees. Specifically, they asserted that Caballero ceased to be a member from December 8, 1999, while Bote and Padolina ceased to be members effective March 16, 2002. Bautista, as Vice President of the Board of Trustees, reported to the SEC the cessation of Caballero, Bote, and Padolina's membership in her three separate letters⁸ thereto all dated June 26, 2002.

Ruling of the SEC

In its Order⁹ dated February 18, 2005, the SEC directed the Bote Group to submit the following documents in support of their petition for voluntary dissolution:

1. Resolution duly approved by the majority of the Board of Trustees and adopted by at least two-thirds (2/3) of the members;
2. Latest Audited Financial Statement;
3. BIR Tax Clearance;
4. Names of creditors, addresses and amount of indebtedness and schedule of liabilities;
5. Inventory of assets/properties;
6. Publisher's affidavit and notice of dissolution for three (3) consecutive weeks in a newspaper of general circulation;
7. Cases pending before the Courts, Commission, or any administrative office of the government;

SO ORDERED.¹⁰

Due to the failure of the Bote Group to comply with the Order dated February 18, 2005, the SEC dismissed¹¹ their petition (without

⁷ *Id.* at 65-67.

⁸ *Id.* at 69-70, 73.

⁹ *Id.* at 80.

¹⁰ *Id.*

¹¹ *Rollo*, pp. 38-39.

prejudice to the filing of another one at a future time) on October 28, 2010.

Aggrieved, Sto. Cristo, Msgr. Veneracion, Bote, Caballero, Padolina and Fr. Villamayor (petitioners) filed a petition for review with the CA.

Ruling of the CA

On October 2, 2012, the CA denied the petition.

The CA noted that the Bote Group only submitted two out of the seven necessary documents for their petition for dissolution. The documents were: (1) a resolution approved by the majority of the Board of Trustees and adopted by at least two-thirds of the members; and (2) publisher's affidavit evidencing the fact of publication of the notice of dissolution. According to the CA, the two documents would not suffice because the requirements mandated by the Corporation Code of the Philippines and the internal rules of the SEC should be strictly complied with.

The CA added that the submission of the required documents was the duty of the Board of Trustees. As such, the SEC cannot compel respondents into submitting the other documents for the petition for dissolution of the Bote Group.

With the denial of their motion for reconsideration, petitioners filed the instant petition raising the following issues:

A. Whether the [CA] was correct in ruling that under Section 5(1) of the [Securities Regulation Code, the SEC is given] the power to subpoena documents and compel testimony only when] "an entity or person is under investigation" by the SEC, and (implicitly) because no person or entity is under investigation in the proceedings for the voluntary dissolution of the [School] it was not proper for the SEC to act upon and grant petitioners' Request for Subpoena.

B. Whether the [CA] was correct in affirming the SEC's dismissal of the Petition for Dissolution on the ground that petitioners failed to submit the documents required by the SEC even if petitioners could not possibly submit these documents because the

documents were in the possession and custody of the respondents who opposed the Petition for Dissolution and whose position was clearly antagonistic to that of the petitioners.¹²

Petitioners' Arguments

Petitioners posit that the CA erred in ruling that the SEC's power to compel the submission of documents and the attendance of witnesses was proper only in cases where a person or an entity is under its investigation, and that such power did not include a case involving a petition for voluntary dissolution of a corporation, as the one at bench.

Petitioners also claim that it was unjust and unreasonable for the SEC to dismiss the petition for dissolution when the cause for dismissal was the latter's own failure to act upon the motion for subpoena filed by the Bote Group. They add that their right to seek the lawful dissolution of Sto. Cristo should not have been prevented simply because the documents required by the SEC are in the possession of persons who unlawfully wrested control of the School.

Respondents' Arguments

Respondents counter that even prior to the submission of this petition, Sto. Cristo already ceased its operations. As such, they insist that the issue of the dissolution of Sto. Cristo is already moot.

Ruling of the Court

The petition lacks merit.

The issue of whether the Bote Group fully submitted the necessary documents in support of its petition for voluntary dissolution relates to factual matters, which are not within the scope of a Rule 45 petition. The Court is not a trier of facts and only pure questions of law may be raised in a petition for review on *certiorari*. At the same time, the Court accords great weight and respect on the factual findings of the SEC since it is the administrative agency tasked to administer corporations,¹³ including determining the propriety of a petition for dissolution filed before it. This being the settled ruled, the Court finds no cogent reason to

¹² *Id.* at 13-14.

¹³ *Vesagas v. Court of Appeals*, 422 Phil. 860, 866 (2001).

disturb the ruling of the SEC in dismissing the petition for voluntary dissolution filed by the Bote Group.

In addition, Sections 4 and 5 of the Securities Regulation Code¹⁴ describe the SEC as an administrative agency vested with certain powers and functions. It has jurisdiction and supervision over all corporations. It has the power to issue *subpoena duces tecum* and to summon witnesses to appear in any proceedings before it, "and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws," among other powers and functions.

Meanwhile, Section 119 (prior to the amendments introduced in 2019) of the Corporation Code of the Philippines¹⁵ provides for the manner governing the voluntary dissolution of a corporation where creditors are affected, *viz.*:

Sec. 119. *Voluntary Dissolution where Creditors are Affected.* – Where the dissolution of a corporation may prejudice the rights of any creditor, a petition for dissolution of a corporation shall be filed with the Securities and Exchange Commission. **The petition shall be signed by a majority of its board of directors or trustees or other officers having the management of its affairs,** verified by its president or secretary or one of its directors or trustees, and shall set forth all claims and demands against it, and that its dissolution was resolved upon by the affirmative vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members at a meeting of its stockholders or members called for that purpose.

If the petition is sufficient in form and substance, the Commission, by an order reciting the purpose of the petition, shall fix a date on or before which objections thereto may be filed by any person, which date shall not be less than thirty (30) days nor more than sixty (60) days after the entry of the order. Before such date, a copy of the order shall be published at least once a week for three (3) consecutive weeks in a newspaper of general circulation published

¹⁴ Republic Act No. 8799, July 19, 2000.

¹⁵ Batas Pambansa Blg. 68, May 1, 1980.

in the municipality or city where the principal office of the corporation is situated, or if there be no such newspaper, then in a newspaper of general circulation in the Philippines, and a similar copy shall be posted for three (3) consecutive weeks in three (3) public places in such municipality or city.

Upon five (5) days notice, given after the date on which the right to file objections as fixed in the order has expired, the Commission shall proceed to hear the petition and try any issue made by the objections filed; and if no such objection is sufficient, and the material allegations of the petition are true, it shall render judgment dissolving the corporation and directing such disposition of its assets as justice requires, and may appoint a receiver to collect such assets and pay the debts of the corporation. (Rule 104, RCa) (Emphasis supplied.)

It cannot be gainsaid that the regulatory authority of the SEC covers nearly all of the concerns of corporations. As the administrative agency responsible for regulating corporations, the SEC has the competence and means to ascertain whether the documents submitted to it are sufficient—in form and substance—and are pertinent for any proceeding before it. The SEC cannot, therefore, be stripped of its authority to exercise and perform its specific powers and functions.¹⁶ In the same vein, it cannot be compelled to perform functions which it deems unnecessary and uncalled for by a given situation.

To note, when the Bote Group submitted only two of the seven required documents supporting their petition, the determination of the SEC that petitioners failed to substantiate their petition for voluntary dissolution was within the SEC's jurisdiction to make.¹⁷ Also, strictly speaking, the submission of such petition does not *yet* involve an "investigation" because pursuant to Section 119 of the Corporation Code of the Philippines quoted above, the proceedings (to hear objection, if any, and proceed with the hearing of the petition) will commence subsequent to the filing of a petition—if the petition is found to be sufficient in form and substance. In this regard, contrary to petitioners' postulation, unless petitioners will first submit a petition sufficient in form and in substance, the SEC cannot be compelled to issue subpoena against respondents (to appear and or bring documents) as its

¹⁶ *Provident Int'l. Resources Corp., et al. v. Venus, et al.*, 577 Phil. 410, 418 (2008).

¹⁷ *Id.* at 419.

investigation to hear objection and conduct hearing on the petition has not yet commenced.

Indeed, an administrative agency may investigate for the purpose of obtaining information for a legislative or judicial action and may even require the attendance of witnesses in its investigatory proceedings.¹⁸ It, thus, follows that there must be an investigation being conducted in order for an administrative agency, like the SEC, to issue subpoenas. There being none yet commenced here, then the SEC need not issue any subpoena upon respondents.

Moreover, petitioners claim that they form part of the legitimate Board of Trustees yet it is perplexing how they purportedly secured the majority vote of its members, but they could not submit the documents being required by the SEC. After all, the following documents: (a) the Latest Audited Financial Statement; b) BIR Tax Clearance; c) Names of creditors, addresses and amount of indebtedness and schedule of liabilities; d) Inventory of assets/properties; and e) Cases pending before the Courts, Commission, or any administrative office of the government, are necessary to convince the members of the Board and the entire membership of Sto. Cristo for the need of its dissolution. At the same time, their submission will bolster the claim that those persons comprising the Bote Group or the ones who filed the petition for voluntary dissolution are truly the legitimate majority of the Board of Trustees and that they manage the affairs of Sto. Cristo.

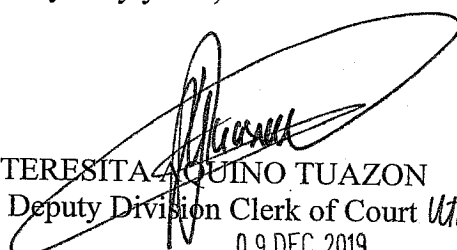
Given all these, the Court finds no reversible error on the part of the CA in affirming the ruling of the SEC in dismissing the petition for voluntary dissolution.

WHEREFORE, the petition is **DENIED**. The assailed Decision dated October 2, 2012 and the Resolution dated June 6, 2013 of the Court of Appeals in CA-G.R. SP No. 116858 are **AFFIRMED**.

¹⁸ *Sec. Evangelista v. Judge Jarencio*, 160-A Phil. 753, 762 (1975).

SO ORDERED." (Hernando, *J.*, on leave; Zalameda, *J.*, designated additional member per Special Order No. 2724 dated October 25, 2019)."

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *Utth 12/6*
09 DEC 2019

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