

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
THIRD DIVISION**

**PEARSON & GEORGE, (S.E. ASIA),
INC.,**

Petitioner,

-versus-

**G.R. No. 113928
February 1, 1996**

**NATIONAL LABOR RELATIONS
COMMISSION and LEOPOLDO
LLORENTE,**

Respondents.

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DECISION

DAVIDE, JR., J.:

In this Special Civil Action for Certiorari under Rule 65 of the Rules of Court, the petitioner seeks the annulment of the Decision of 22 April 1993^[1] and Order of 25 November 1993^[2] of public respondent National Labor Relations Commission (NLRC) in NLRC CA No. 0034-07-92 which, respectively, dismissed the petitioner's appeal from the decision of the Labor Arbiter in NLRC NCR Case No. 00-04-02127-90 and denied the petitioner's motion for reconsideration.

The petitioner insists that the Labor Arbiter and the NLRC do not have jurisdiction over the private respondents complaint for illegal

dismissal arising out of his removal as Managing Director of the petitioner due to his non-reelection and the abolition of the said position. It claims that the matter is intra-corporate and thus falls within the exclusive jurisdiction of the Securities and Exchange Commission (SEC) pursuant to Section 5(c) of P.D. No. 902-A.

In a Manifestation submitted in lieu of the required comment on the petition, the Office of the Solicitor General agrees with the petitioner that the NLRC has no jurisdiction over the private respondent's complaint for illegal dismissal and prays that the NLRC be granted a new period within which to file its own comment should it desire to do so.

The NLRC filed its own comment contending that it has jurisdiction over the case because the private respondent was not just an-incorporator but also a Managing Director and a line officer or an employee of the petitioner with a salary of P33,000.00 a month; hence, his complaint for illegal dismissal as such employee is within the jurisdiction of the NLRC.

The private respondent does not meet the substantive issues raised by the petitioner but merely sets up the following defenses: (1) the petition was filed long after the lapse of ten days provided for in Article 223 of the Labor Code; (2) a special civil action for certiorari under Rule 65 is not the proper remedy because of the aforementioned provision; 3) the petition is defective because it does not allege when the petitioner received the NLRC decision; and (4) the petition raises factual issues.

In its Reply, the petitioner refutes the foregoing arguments of the private respondent by stating that (1) this Court may take cognizance of petitions questioning the decisions of the NLRC on the ground of lack or excess of jurisdiction or grave abuse of discretion in spite of Article 223 of the Labor Code making final the said decisions after ten calendar days from receipt thereof; (2) the only way by which a labor case may reach this Court is through a petition for certiorari, which must be filed within a reasonable time from receipt of the resolution denying the motion for reconsideration of the decision of the Commission; (3) for purposes of showing the timeliness of the petition, the petitioner has only to state, as it did, the date the order

denying the motion for reconsideration was received; and (4) in order to resolve the main issue raised in this petition, viz., whether the NLRC has jurisdiction over this case it was necessary to state the factual circumstances of the case.

After deliberating on the pleadings submitted by the parties, we resolved to give due course to this petition and to require the parties to submit their respective memoranda.

The factual antecedents as culled from the pleadings are not in dispute:

Private respondent Leopoldo Llorente (hereinafter Llorente) was a member of the Board of Directors of the petitioner. In its organizational meeting on 12 January 1989, the Board of Directors elected among themselves the corporate officers. Llorente was elected as Vice-Chairman of the Board and as Managing Director for a term of one year and until his successor should have been duly elected pursuant to the petitioner's by-laws.

On 29 January 1990, Llorente was preventively suspended, with pay, by reason of alleged anomalous transactions entered by him, which were prejudicial to the interest of the petitioner.

In a letter dated 1 February 1990, Llorente demanded from the petitioner access to his room which the latter allegedly sealed; compensation for his suspension or termination; and delivery of his stock certificates for 9,998 shares.

On 17 February 1990, the petitioner sent Llorente a letter requiring him to explain the acts enumerated therein which he allegedly committed.

On 27 February 1990, Llorente, through his counsel, protested his suspension and requested an examination of the supporting documents to enable him to explain the accusations leveled against him, but to no avail.

At the regular stockholders' meeting on 5 March 1990, the stockholders of the petitioner elected a new set of directors. Llorente

was not reelected. On the same day, the new Board of Directors held a meeting wherein it elected a new set of officers and abolished the position of Managing Director.

On 12 March 1990, the petitioner's counsel informed Llorente of his non-reelection, the abolition of the position of Managing Director, and his termination for cause.

On 11 April 1990, Llorente filed with the Labor Arbiter a complaint for unfair labor practice, illegal dismissal, and illegal suspension alleging therein that he was dismissed without due process of law. The case was docketed as NLRC NCR Case No. 00-04-02127-90.

Upon receipt of the summons, the petitioner filed a Motion to Dismiss alleging therein that The case falls within the jurisdiction of the SEC and not of the NLRC.

In his order of 1 March 1991, the Labor Arbiter denied the said motion on the ground that Llorente was not merely acting as a Director but was likewise doing the functions of a manager or line officer of the corporation.

The parties thereafter filed their respective position papers.

In a decision dated 18 May 1992, the Labor Arbiter found for Llorente, ruled that he was illegally terminated from employment, and disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding the suspension and the eventual dismissal as illegal and ordering respondent to:

1. Pay the complainant his full backwages from January 29, 1990 to date or in the amount of Nine Hundred Twelve Thousand Seven Hundred Eighty (P912,780.00) Pesos;
2. To pay complainant attorney's fees equivalent to ten (10%) percent of his backwages;

3. This Office is cognizant of the fact that due to the instant case, the relations between the parties is so strained that the reinstatement may no longer be feasible. Besides, there may be no equivalent position as the Office of the Managing Director had been abolished; and
4. To pay complainant moral damages in the amount of Fifty Thousand (P50,000.00) Pesos.

The petitioner appealed to the NLRC from the said decision.

Relying on our decision in LEP International Philippines, Inc. vs. National Labor Relations Commission,^[3] the NLRC dismissed the petitioners appeal and affirmed the decision of the Labors Arbiter. It likewise denied the petitioners motion for reconsideration.

Hence, this petition for certiorari in support of which the petitioner asserts as follows:

I

THE NLRC ACTED WITHOUT JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION IN ASSUMING JURISDICTION OVER THE PRESENT CONTROVERSY BETWEEN PETITIONER AND PRIVATE RESPONDENT WHO IS ADMITTEDLY ONE OF ITS INCORPORATORS/STOCKHOLDERS AND A CORPORATE OFFICER.

II

THE NLRC COMMITTED SERIOUS ERRORS AND ACTED WITH GRAVE ABUSE OF DISCRETION IN FINDING THAT THE REMOVAL FROM OFFICE BY NON-REELECTION OF PRIVATE RESPONDENT IS ONE OF ILLEGAL DISMISSAL CASE WHEREIN IT HAS JURISDICTION TO TRY AND DECIDE.

III

THE NLRC COMMITTED SERIOUS ERROR AND ACTED WITH GRAVE ABUSE OF DISCRETION, ASSUMING WITHOUT CONCEDING THAT IT HAS JURISDICTION OVER THE PRESENT CONTROVERSY, THAT PRIVATE RESPONDENT WAS ILLEGALLY DISMISSED FROM SERVICE.

The pith issue thus raised is whether it is the SEC or the NLRC which has jurisdiction over the complaint for illegal dismissal which the private respondent had filed with the NLRC.

We agree with both the petitioner and the Office of the Solicitor General that the removal of Llorente as Managing Director is purely an intra-corporate dispute which falls within the exclusive jurisdiction of the SEC and not of the NLRC.

In reality, Llorente was not dismissed. If he lost the position of Managing Director, it was primarily because he was not reelected as Director during the regular stockholders' meeting on 5 March 1990. The office of Managing Director presupposes that its occupant is a Director; hence, one who is not a Director of the petitioner or who has ceased to be a Director cannot be elected or appointed as a Managing Director. Elsewise stated, the holding of the position of Director is a prerequisite for the election, appointment, or designation of Managing Director. If a Managing Director should lose his position because he ceased to be a Director for any reason, such as non-reelection as in the case of Llorente, such loss is not dismissal but failure to qualify or to maintain a prerequisite for that position. Then too, the position of Managing Director was abolished.

Any question relating or incident to the election of the new Board of Directors, the non-reelection of Llorente as a Director, his loss of the position of Managing Director, or the abolition of the said office are intra-corporate matters. Disputes arising therefrom are intra-corporate disputes which, if unresolved within the corporate structure of the petitioner, may be resolved in an appropriate action only by the SEC pursuant to its authority under paragraphs (b) and (c), Section 5 of P.D. No. 902-A,^[4] which provide as follows:

SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

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(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnership or associations.

Thus, in *Philippine School of Business Administration vs. Leano*,^[5] we ruled that a complaint for illegal dismissal arising from a Board of Directors' action declaring vacant all corporate positions except that of Chairman and President, and from the non-reelection of the former Executive Vice-President during the ensuing election of officers is not cognizable by the NLRC. Pertinent portions of our opinion therein read as follows:

Basically, therefore, the question is whether the election of directors on August 1, 1981 and the election of officers on September 5, 1981, which resulted in TAN's failure to be re-elected, were validly held. This is the crux of the question that TAN has raised before the SEC. Even in his position paper before the NLRC, TAN alleged that the election on August 1, 1981 of the three directors was in contravention of the PSBA By-Laws providing that any vacancy in the Board shall be filled by a majority vote of the stockholders at a meeting specially called for the purpose. Thus, he concludes, the Board meeting on

September 5, 1981 was tainted with irregularity on account of the presence of illegally elected directors without whom the results could have been different.

TAN invoked the same allegations in his complaint filed with the SEC. So much so, that on December 17, 1981, the SEC (Case No. 2145) rendered a Partial Decision annulling the election of the three directors and ordered the convening of a stockholders' meeting for the purpose of electing new members of the Board. The correctness of said conclusion is not for us to pass upon in this case. TAN was present at said meeting and again sought the issuance of injunctive relief from the SEC.

The foregoing indubitably show that, fundamentally, the controversy is intra-corporate in nature. It revolves around the election of directors, officers or managers of the PSBA, the relation between and among its stockholders, and between them and the corporation. Private respondent also contends that his "ouster" was a scheme to intimidate him into selling his shares and to deprive him of his just and fair return on his investment as a stockholder received through his salary and allowances as Executive Vice- President. Vis-a-vis the NLRC, these matters fall within the jurisdiction of the SEC.

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This is not a case of dismissal. The situation is that of a corporate office having been declared vacant, and of TAN's not having been elected thereafter. The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection. Generally speaking, the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist.

We reiterated this rule in *Dy vs. National Labor Relations Commission*,^[6] which involved an action for illegal dismissal filed by a bank manager who was not reelected as such, and in *Fortune Cement Corporation vs. National Labor Relations*

Commission,^[7] which involved a complaint for illegal dismissal instituted by an Executive Vice-President of the corporation who lost that position when he was dismissed as such by the Board of Directors for loss of trust and confidence.

The reliance by the NLRC on *LEP International Philippines, Inc. vs. National Labor Relations Commission* is misplaced. What was challenged :in that case was not the jurisdiction of the respondent Commission but its act of upholding the validity of the dismissal; LEP's Chief Executive, who was not a stockholder, much less a director, of LEP but was merely a managerial employee of the said company.

WHEREFORE, the instant petition is **GRANTED**. The challenged decision of 22 April 1993 and order of 25 November 1993 of public respondent National Labor Relations Commission in NLRC Case No. 0034-07-92 and the decision of 18 May 1992 of the Labor Arbiter in NLRC NCR Case No. 00-04-02127-90 are hereby **ANNULLED** and **SET ASIDE** for having been rendered without jurisdiction.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Melo, Francisco and Panganiban, JJ., concur.

[1] Annex "A" of Petition; Rollo, 34-54. Per Commissioner Vicente S.E. Veloso, with Presiding Commissioner Bartolome S. Carale concurring.

[2] Annex "B," Id.; Id., 5.

[3] 205 SCRA 737 [1992].

[4] Entitled, "Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency under the Administrative Supervision of the Office of the President."

[5] 127 SCRA 778 [1984].

[6] 145 SCRA 211 [1986].

[7] 193 SCRA 258 [1991].