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two (2) years from the time they were deposited in the bonded warehouse of the Bureau of Customs.

WHEREFORE, the petition is *GRANTED*, the Decision of the Court of Appeals in CA-G.R. CV No. 21966 is *SET ASIDE*, and the Decision of the Regional Trial Court of origin, dated February 13, 1989, *REINSTATED and AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and *Gonzaga-Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 108710. September 14, 1999]

ARMANDO T. DE ROSSI, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (First Division), MATLING INDUSTRIAL AND COMMERCIAL CORPORATION AND RICHARD K. SPENCER,** *respondents.*

SYNOPSIS

Petitioner Armando T. De Rossi is an Italian citizen. He was the Executive Vice-President and General Manager of private respondent Matling Industrial and Commercial Corporation (MICC) since July 1, 1985. On August 10, 1988, MICC terminated his employment. Petitioner filed a complaint for illegal dismissal with corresponding damages. The Labor Arbiter rendered a decision in favor of the petitioner. MICC appealed the decision to the National Labor Releation Commission (NLRC). On January 6, 1992, petitioner filed a motion for issuance of Writ of Execution. MICC opposed the said motion

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on the ground, among others, that the position of Executive Vice-President is an elective post, specifically provided by corporation's by laws. Thus, the dismissal of the petitioner was an intra-corporate matter and it is within the jurisdiction of the Securities and Exchange Commission (SEC) and not with the Labor Arbiter nor the NLRC. On July 7, 1992, the Executive Labor Arbiter granted the Writ of Execution. However, on October 30, 1992, the NLRC rendered its decision dismissing the case by recognizing SEC's jurisdiction over the case.

Hence, this petition.

The Court ruled that the by-laws being in force, clearly petitioner is considered an officer of MICC, elected and/or designated by its board of directors. Following Section 5(c) of P.D. No. 902-A, the SEC exercise exclusive jurisdiction over controversies regarding the election and/or designation of directors, trustees, *officers or managers* of a corporation, partnership or association. This provision is indubitably applicable to the petitioner's case. Jurisdiction here is not with the Labor Arbiter nor the NLRC, but with the SEC.

The petition is DENIED.

SYLLABUS

1. **MERCANTILE LAW; CORPORATION LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; CASES INVOLVING REMOVAL OF CORPORATE OFFICERS.**— In a string of cases this Court has consistently held that the SEC, and not the NLRC, has original and exclusive jurisdiction over cases involving the removal of corporate officers. Section 5, paragraph (c) of P.D. 902-A unequivocally provides that SEC has jurisdiction over intra-corporate affairs regarding the election or appointment of officers of a corporation.

2. **ID.; ID.; ID.; ID.; ID.; APPLICABLE IN INSTANT CASE.**— The by-laws being in force, clearly petitioner is considered an officer of MICC, elected and/or designated by its board of directors. Following Section 5(c) of P.D. No. 902-A, the SEC exercises exclusive jurisdiction over controversies regarding the election and/or designation of directors, trustees, *officers or managers* of a corporation, partnership or association. This provision is indubitably applicable to the petitioner's case.

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Jurisdiction here is not the Labor Arbiter nor the NLRC, but with the SEC.

3. **ID.; ID.; INTRA-CORPORATE CONTROVERSY; CORPORATE OFFICER'S REMOVAL FROM OFFICE IS IN NATURE THEREOF.**— Note that a corporate officer's removal from his office is a corporate act. If such removal occasions an intra-corporate controversy, its nature is not altered by the reason or wisdom, or lack thereof, with which the Board of Directors might have in taking such action. When petitioner, as Executive Vice-President allegedly diverted company funds for his personal use resulting in heavy financial losses to the company, this matter would amount to fraud. Such fraud would be detrimental to the interest not only of the corporation but also of its members. This type of fraud encompasses controversies in a relationship within the corporation covered by SEC jurisdiction. Perforce, the matter would come within the area of corporate affairs and management, and such a corporate controversy would call for the adjudicative expertise of the SEC, not the Labor Arbiter or the NLRC.

4. **REMEDIAL LAW; JURISDICTION; MAY BE QUESTIONED AT ANY TIME EVEN ON APPEAL.**— Petitioner maintains that MICC can not question now the issue of jurisdiction of the NLRC, considering that MICC did not raise this matter until after the case had been brought on appeal to the NLRC. However, it has long been established as a rule, that jurisdiction of a tribunal, agency, or office, is conferred by law, and its lack of jurisdiction may be questioned at any time even on appeal. In *La Naval Drug Corporation vs. Court of Appeals,* 236 SCRA 78, 90, this Court said: "Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside." Hence, lack of jurisdiction on the part of the Labor Arbiter first, and of the NLRC on appeal, is fatal to petitioner's cause.

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APPEARANCES OF COUNSEL

Quasha Asperilla Ancheta Penal & Nolasco for petitioner.
The Solicitor General for public respondent.
Reyes Yee & Reyes Law Offices for private respondents.

RESOLUTION

QUISUMBING, *J.*:

This petition for *certiorari*, under Rule 65 of the Rules of Court, assails the Decision[1] of the National Labor Relations Commission (NLRC) which ruled that jurisdiction over a complaint by a corporate executive and management officer for illegal dismissal rests with the Securities and Exchange Commission, and not the Labor Arbiter and the NLRC. Said Decision reversed and set aside the holding of the Labor Arbiter[2] who sustained petitioner's claim for reinstatement and damages.

The antecedent facts are as follows:

An Italian citizen, petitioner was the Executive Vice-President and General Manager of private respondent, Matling Industrial and Commercial Corporation (MICC). He started work on July 1, 1985. On August 10, 1988, MICC terminated his employment.

Aggrieved, petitioner filed with the NLRC, National Capital Region on September 21, 1989, a complaint[3] for illegal dismissal with corresponding damages.

MICC based petitioner's dismissal on the ground that the petitioner failed to secure his employment permit, grossly mismanaged the business affairs of the company, and misused corporate funds. However, petitioner argued that it was the duty of the company to secure his work permit during the term

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[1] *Rollo*, pp. 25-44; dated October 30, 1992 and penned by Commissioner Vicente Veloso with Presiding Commissioner Bartolome Carale and Romeo Putong, concurring.

[2] Manuel P. Asuncion; *Rollo*, pp. 69-79.

[3] NLRC Records, pp. 2-6; NLRC Case No. 00-09-04460-89.

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of his office, and that his termination was illegal for lack of just cause.

On November 27 1991, Labor Arbiter Asuncion rendered a decision in favor of petitioner, disposing as follows:

"WHEREFORE, respondents, Matling Industrial and Commercial Corporation and Richard K. Spencer, are jointly and severally ordered:

1. To reinstate the complainant Armando T. de Rossi to his former positions as Executive Vice-President and General Manager, without loss of seniority rights, and other privileges and with full backwages, from the date his salary was withheld until he is actually reinstated. His reinstatement is immediately executory;

2. To pay the complainant the sum of ₱800,000 as moral damages, and another ₱700,000.00 as exemplary damages.

3. To pay Attorney's fee equivalent to 10% of the total amount awarded.

SO ORDERED."[4]

MICC appealed the decision of the labor arbiter to the NLRC (First Division) on the ground that Asuncion committed grave abuse of discretion amounting to lack of jurisdiction in reinstating the petitioner and awarding him backwages and damages, because the termination of petitioner was for a valid cause.

On January 6, 1992, petitioner filed a motion for issuance of writ of execution,[5] stating that the reinstatement order is immediately executory, even pending appeal pursuant to Article 223 of the Labor Code.

On January 16, 1992, respondents opposed the said motion. On February 6, 1992, petitioner filed a manifestation reiterating his request for reinstatement.

On February 26, 1992, and March 12, 1992, respectively, private respondents filed a counter manifestation and motion;

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[4] *Supra*, note 2 at 79.

[5] *Rollo*, pp. 87-88.

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they reiterated their vehement objection thereto as already signified in their opposition. Further, they contended that the position of executive vice-president is an elective post, specifically provided by the corporate's by-laws. Thus, the dismissal of the petitioner was an intra-corporate matter within the jurisdiction of the Securities and Exchange Commission (SEC) and not with the Labor Arbiter nor the NLRC. Therein, private respondents cited several cases decided by the Court in support of their contention, among them: *Dy vs. National Labor Relations Commission*, 145 SCRA 211, *Fortune Cement Corp. vs. National Labor Relations Commission,* 193 SCRA 258, *PSBA vs. Leano,* 127 SCRA 778.

On July 7, 1992, OIC and Executive Labor Arbiter Lita Aglibut issued a writ of execution. Aglibut directed Sheriff Max Lago to collect the backwages of petitioner de Rossi, in the amount of six hundred seventy five thousand (₱675,000.00) pesos from MICC. Further, she gave MICC the option to reinstate de Rossi physically or constructively through payroll reinstatement until the final resolution of the case by the NLRC.

On August 5, 1992, private respondents filed a motion for reconsideration of the writ of execution, reiterating their argument that the SEC and not the NLRC has original and exclusive jurisdiction over the subject matter which involves the removal of a corporate officer.

On October 30, 1992, the NLRC rendered its decision dismissing the case by virtue of Section 5, paragraph (c), of P.D. No. 902-A. However, the Commission stated that, although in its view it has jurisdiction over the case, it must yield to the Supreme Court's decisions recognizing SEC's jurisdiction over such a case, to wit:

"It is our view that notwithstanding the provisions of Presidential Decree No. 902-A, we in this Commission, have jurisdiction over this case. The reason being, Article 217 of the Labor Code was amended on March 21, 1989 by Section 9, Republic Act 6715, *viz.*:

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On the other hand, we are mindful of a rule in this jurisdiction (geared towards stability of jurisprudence) that:

> 'If a judge of a lower court feels, in the fulfillment of his mission of deciding cases, that the application of a doctrine promulgated by his superiority is against his way of reasoning, or against his conscience, *he may state his opinion on the matter, but rather than disposing of the case in accordance with his personal views, he must first think that it is his duty to apply the law as interpreted by the highest court of the land, and that any deviation from a principle laid down by the latter would unavoidably cause, as a sequel, unnecessary inconveniences, delay and expenses to the litigants.*'(italics by NLRC, *People vs. Santos*, 56 O.G. 3546)

Guided by the above mandate, we thus have stated our 'opinion on the matter, but rather than disposing of the case in accordance with our views, we cannot but apply the law as interpreted by the highest court of the land,' and rule that jurisdiction here is not with us but with the Securities and Exchange Commission.

WHEREFORE, the appealed decision is hereby set aside, and this case is dismissed for want of jurisdiction.

SO ORDERED."[6]

In his petition for *certiorari* dated February 11, 1993, petitioner contends that:

"I. THE NATIONAL LABOR RELATIONS COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR ACTED IN EXCESS OF ITS JURISDICTION IN HOLDING THAT THE SECURITIES AND EXCHANGE COMMISSION HAS JURISDICTION OVER THE COMPLAINT FOR ILLEGAL DISMISSAL FILED BY PETITIONER.

"II. THE ISSUES RAISED IN THE COMPLAINT FOR ILLEGAL DISMISSAL ARE RIPE FOR ADJUDICATION BY THIS HONORABLE COURT."[7]

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[6] *Rollo*, pp. 39-40, 42-43.

[7] *Id.* at 12.

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Petitioner asserts that even managerial employees are entitled to the protection of labor laws. He states that his case is peculiar, and not similar to those cited by private respondents. Petitioner claims that he was neither elected to the post nor stockholder of MICC. Furthermore, petitioner avers that during the proceedings before the Labor Arbiter, private respondents never questioned the issue of jurisdiction; it would be too late to raise it now.

Respondent NLRC argues that under the Corporation Code, there is no requirement that an executive vice-president of a corporation should be a stockholder or a member of the Board of Directors. Further, as observed by the Solicitor General, Section 5 of P. D. 902-A did not limit the jurisdiction of the SEC to controversies in the election or appointment of directors and trustees, but also included officers or managers of such corporations, partnerships or associations.

On this score, we are in agreement with the public respondent's submission through the Solicitor General. In a string of cases[8] this Court has consistently held that the SEC, and not the NLRC, has original and exclusive jurisdiction over cases involving the removal of corporate officers. Section 5, paragraph (c) of P.D. 902-A unequivocally provides that SEC has jurisdiction over intra-corporate affairs regarding the election or appointment of officers of a corporation, to wit:

"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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[8] *PSBA vs. Leano*, 127 SCRA 778 (1984); *Dy vs. NLRC*, 145 SCRA 211 (1986); *Cagayan de Oro Coliseum, Inc. vs. Office of the MOLE*, 192 SCRA 315 (1990); *Fortune Cement Corporation vs. NLRC*, 193 SCRA 258 (1991); *Lozon vs. NLRC*, 240 SCRA 1 (1995); *Espino vs. NLRC*, 240 SCRA 52 (1995). Note that these cases are distinct from G.R. No. 122725, *Biogenerics Marketing & Research Corp. vs. NLRC*, September 8, 1999 because in *Biogenerics* the jurisdictional issue concerns the cash or surety bond requirement. For lack of such requirement, NLRC dismissed petitioners' appeal.

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(c) *Controversies in the election or appointments of directors, trustees, officers* or managers of such corporation, partnership or association."

We have earlier pronounced that an "office" is created by the charter of the corporation under which a corporation is organized, and the officer is elected by the directors or stockholders.[9] In the present case, private respondents aver that the officers and their terms of office are prescribed by the corporation's by-laws, which provide as follows:

BY-LAW NO. III Directors and Officers

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"The officers of the corporation shall be *the* President, *Executive Vice President*, Secretary and Treasurer, each of whom may hold his office until his successor is elected and qualified, unless sooner removed by the Board of Directors; Provided, That for the convenience of the corporation the office of the Secretary and Treasurer may be held by one and the same person. Officers shall be designated by the stockholders' meeting at the time they elect the members of the Board of Directors. Any vacancy occurring among the officers of the Corporation on account of removal or resignation shall be filled by a stockholder's meeting. Stockholders holding one half, or more of the subscribed capital stock of the corporation may demand and compel the resignation of any officer at any time."[10]

The by-laws being in force, clearly petitioner is considered an officer of MICC, elected and/or designated by its board of directors. Following Section 5(c) of P.D. No. 902-A, the SEC exercises exclusive jurisdiction over controversies regarding the election and/or designation of directors, trustees, *officers or managers* of a corporation, partnership or association. This provision is indubitably applicable to the petitioner's case. Jurisdiction here is not with the Labor Arbiter nor the NLRC, but with the SEC.

[9] *Tabang vs. NLRC, 266 SCRA 462, 467 (1997)*; citing 2 Fletcher Cyc. Corp., Ch. II, Sec. 266.

[10] Records, NLRC at 153. Italics supplied.

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Note that a corporate officer's removal from his office is a corporate act. If such removal occasions an intra-corporate controversy, its nature is not altered by the reason or wisdom, or lack thereof, with which the Board of Directors might have in taking such action.[11] When petitioner, as Executive Vice-President allegedly diverted company funds for his personal use resulting in heavy financial losses to the company, this matter would amount to fraud. Such fraud would be detrimental to the interest not only of the corporation but also of its members.[12] This type of fraud encompasses controversies in a relationship within the corporation covered by SEC jurisdiction.[13] Perforce, the matter would come within the area of corporate affairs and management, and such a corporate controversy would call for the adjudicative expertise of the SEC, not the Labor Arbiter or the NLRC.

Petitioner maintains that MICC can not question now the issue of jurisdiction of the NLRC, considering that MICC did not raise this matter until after the case had been brought on appeal to the NLRC. However, it has long been established as a rule, that jurisdiction of a tribunal, agency, or office, is conferred by law, and its lack of jurisdiction may be questioned at any time even on appeal.[14] In *La Naval Drug Corporation vs. Court of Appeals,* 236 SCRA 78, 90,[15] this Court said:

"Lack of jurisdiction over the subject matter of the suit is yet another matter. Whenever it appears that the court has no jurisdiction over the subject matter, the action shall be dismissed. This defense

[11] *Lozon vs. NLRC*, 240 SCRA 1, 9 (1995); *Espino vs. NLRC*, 240 SCRA 52, 62 (1995).

[12] *Alleje vs. Court of Appeals*, 240 SCRA 495, 501 (1995).

[13] *Magalad vs. Premier Financing Corporation*, 209 SCRA 260, 264 (1992).

[14] *Estrada vs. NLRC*, 262 SCRA 709, 714 (1996).

[15] Citing *Roxas vs. Rafferty*, 37 Phil. 957 (1918); *Corona vs. Court of Appeals*, 214 SCRA 378 (1992); *Javier vs. Court of Appeals*, 214 SCRA 572 (1992); *Southeast Asian Fisheries Development Center-Aquaculture Department vs. NLRC*, 206 SCRA 283 (1992); *People vs. Eduarte*, 182 SCRA 750 (1990).

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may be interposed at any time, during appeal or even after final judgment. Such is understandable, as this kind of jurisdiction is conferred by law and not within the courts, let alone the parties, to themselves determine or conveniently set aside."

Hence, lack of jurisdiction on the part of the Labor Arbiter first, and of the NLRC on appeal, is fatal to petitioner's cause.

WHEREFORE, the instant petition is hereby *DENIED*, and the respondent NLRC's dismissal of the complaint for lack of jurisdiction, is hereby *AFFIRMED*, with costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and *Buena, JJ.*, concur.

THIRD DIVISION

[G.R. No. 110672. September 14, 1999]

RURAL BANK OF STA. MARIA, PANGASINAN, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, ROSARIO R. RAYANDAYAN, CARMEN R. ARCEÑO,** *respondents.*

[G.R. No. 111201. September 14, 1999]

ROSARIO R. RAYANDAYAN and CARMEN R. ARCEÑO, *petitioners, vs.* **COURT OF APPEALS, HALSEMA INC. and RURAL BANK OF STA. MARIA, PANGASINAN, INC.,** *respondents.*

SYNOPSIS

On January 9, 1985 Manuel Behis mortgaged a parcel of land in favor of the Rural Bank of Sta. Maria, Pangasinan. After