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THIRD DIVISION

[G.R. No. 173115. April 16, 2009]

ATTY. VIRGILIO R. GARCIA, *petitioner, vs.* **EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. and ATTY. SALVADOR C. HIZON,** *respondents.*

[G.R. Nos. 173163-64. April 16, 2009]

EASTERN TELECOMMUNICATIONS PHILIPPINES, INC. and ATTY. SALVADOR C. HIZON, *petitioners, vs.* **ATTY. VIRGILIO R. GARCIA,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; CORPORATE OFFICER'S REMOVAL, ALWAYS AN INTRA-CORPORATE CONTROVERSY, WITHIN THE JURISDICTION OF THE SECURITIES AND EXCHANGE COMMISSION (SEC). — The Supreme Court, in a long line of cases, has decreed that **a corporate officer's dismissal or removal is always a corporate act and/or an intra-corporate controversy,** over which the Securites and Exchange Commission [SEC] (now the Regional Trial Court) has original and exclusive jurisdiction.

2. ID.; ID.; INTRA-CORPORATE CONTROVERSY; ELUCIDATED.— We have ruled that an intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as the former's franchise, permit or license to operate is concerned; (3) **between the corporation,** partnership or association **and its** stockholders, partners, members or **officers;** and (4) among the stockholders, partners or associates themselves. In *Lozon v. National Labor Relations Commission*, we declared that Presidential Decree No. 902-A confers on the SEC original and exclusive jurisdiction to hear and decide controversies and cases involving intra-corporate and partnership relations between or among the corporation, officers

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and stockholders and partners, including their elections or appointments x x x.

3. REMEDIAL LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; REMOVAL OF CORPORATE OFFICERS; CORPORATE OFFICERS, ELUCIDATED. — Before a dismissal or removal could properly fall within the jurisdiction of the SEC, it has to be first established that the person removed or dismissed was a corporate officer. "Corporate officers" in the context of Presidential Decree No. 902-A are those officers of the corporation who are given that character by the Corporation Code or by the corporation's by-laws. There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws.

4. ID.; ID.; ID.; ID.; ID.; CASE AT BAR. — Atty. Garcia tries to deny he is an officer of ETPI. Not being a corporate officer, he argues that the Labor Arbiter has jurisdiction over the case. One of the corporate officers provided for in the by-laws of ETPI is the Vice-President. It can be gathered from Atty. Garcia's complaint-affidavit that he was Vice-President for Business Support Services and Human Resource Departments of ETPI when his employment was terminated effective 16 April 2000. It is therefore clear from the by-laws and from Atty. Garcia himself that he is a corporate officer. One who is included in the by-laws of a corporation in its roster of corporate officers is an officer of said corporation and not a mere employee. Being a corporate officer, his removal is deemed to be an intra-corporate dispute cognizable by the SEC and not by the Labor Arbiter.

APPEARANCES OF COUNSEL

Virgilio R. Garcia for and in his behalf.

Villarza & Angangco Law Offices for Easteran Telecommunications Philippines, Inc. and Atty. Salvador Hizon.

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D E C I S I O N

CHICO-NAZARIO, *J.*:

Assailed before Us *via* consolidated petitions for *certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals in CA-G.R. SP No. 88887 and No. 89066 dated 24 March 2006, which dismissed the petitions for *certiorari* questioning the Decision[2] of the National Labor Relations Commission (NLRC) dated 21 March 2003, docketed as NLRC NCR CA No. 028901-01. The NLRC reversed the decision of the Labor Arbiter dated 30 September 2002, finding the preventive suspension and dismissal of Atty. Virgilio R. Garcia illegal, and dismissed the case for lack of jurisdiction.

The facts are not disputed.

Atty. Virgilio R. Garcia was the Vice President and Head of Business Support Services and Human Resource Departments of the Eastern Telecommunications Philippines, Inc. (ETPI).

ETPI is a corporation duly organized and existing under the laws of the Republic of the Philippines.

Atty. Salvador C. Hizon is the President/Chief Executive Officer of ETPI.

On 16 January 2000, Atty. Garcia was placed under preventive suspension based on three complaints for sexual harassment filed by Atty. Maria Larrie Alinsunurin, former manager of ETPI's Office of the Legal Counsel; Ms. Emma Valeros-Cruz, Assistant Vice President of ETPI and former secretary of Atty. Garcia; and Dr. Mercedita M. Macalintal, medical retainer/company physician of ETPI. In response to

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[1] Penned by Associate Justice Renato C. Dacudao with Associate Justices Lucas P. Bersamin and Magdangal M. de Leon, concurring; *rollo* (G.R. No. 173115), pp. 169-192.

[2] Penned by Associate Commissioner Angelita A. Gacutan with Presiding Commissioner Raul T. Aquino and Associate Commissioner Victoriano R. Calaycay, concurring; *rollo* (G.R. No. 173115), pp. 158-167.

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the complaints, the Human Resources Department constituted a Committee on Decorum to investigate the complaints. By reason of said complaints, Atty. Garcia was placed in preventive suspension. The committee conducted an investigation where Atty. Garcia was given copies of affidavits of the witnesses against him and a chance to defend himself and to submit affidavits of his witnesses. The Committee submitted a report which recommended his dismissal.[3] In a letter dated 14 April 2000, Atty. Hizon advised Atty. Garcia that his employment with ETPI was, per recommendation of the Committee, terminated effective 16 April 2000.

A *complaint-affidavit for illegal dismissal* with prayer for full backwages[4] and recovery of moral and exemplary damages was *filed on 11 July 2000* by Atty. Virgilio R. Garcia against ETPI and Atty. Salvador C. Hizon.[5] The case, docketed as NLRC NCR-30-07-02787-00, was assigned to Labor Arbiter Patricio P. Libo-on. The parties submitted their respective position papers,[6] reply position papers[7] and rejoinders.[8] Per agreement of the parties, ETPI and Atty. Hizon filed a sur-rejoinder on 6 March 2001.[9] Atty. Garcia manifested that he was no longer submitting a sur-rejoinder and was submitting the case for resolution.

On 15 April 2001, Atty. Garcia filed a Motion to Inhibit, praying that Labor Arbiter Libo-on inhibit himself from further proceeding with the case, on the ground that he was a fraternity brother of Atty. Hizon.[10] Atty. Garcia thereafter filed a second

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[3] Records, Vol. 1, pp. 320-347.

[4] Reinstatement was not prayed for in the Complaint-Affidavit. The same was asked for only in the Position Paper.

[5] Records, Vol. 1, pp. 2-5.

[6] *Id.* at 31-45, 61-129

[7] *Id.* at 440-445, 467-497.

[8] *Id.* at 504-529. 530-535.

[9] *Id.* at 536-549.

[10] *Id.* at 564-565.

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Motion to Inhibit[11] on 10 May 2001. ETPI and Atty. Hizon opposed said motion, arguing that the reason on which it was grounded was not one of those provided by law.[12] In an Order dated 13 June 2001, said motions were denied.[13] Atty. Garcia appealed said order before the NLRC via a Memorandum on Appeal dated 4 July 2001,[14] to which ETPI and Atty. Hizon filed an Answer.[15]

The NLRC, in its decision dated 20 December 2001, set aside the order of Labor Arbiter Libo-on and ordered the re-raffling of the case.[16] ETPI and Atty. Hizon moved for the reconsideration[17] of the decision, but the same was denied.[18] Consequently, the case was re-raffled to Labor Arbiter Ramon Valentin C. Reyes.[19]

The parties were directed to submit their respective memoranda.[20] Atty. Garcia filed his memorandum[21] on 9 July 2002 while ETPI and Atty. Hizon submitted their memorandum[22] on 22 July 2002. On 16 August 2002, with leave of court, ETPI and Atty. Hizon *filed a Reply Memorandum, raising for the first time the issue of lack of jurisdiction.*

In his **decision dated 30 September 2002**, Labor Arbiter Reyes found the preventive suspension and subsequent dismissal

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[11] *Id.* at 577.

[12] *Id.* at 558-563.

[13] *Id.* at 579-582.

[14] *Id.* at 585-590.

[15] Records, Vol. 2, pp. 5-17.

[16] Records, Vol. 1, pp. 592-601.

[17] *Id.* at 603-616.

[18] *Id.* at 620-621.

[19] *Id.* at 623.

[20] *Id.* at 625.

[21] Records, Vol. 3, pp. 1-48.

[22] *Id.* at 49-56.

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of Atty. Garcia illegal. The dispositive portion of the decision reads:

> WHEREFORE, premises all considered, judgment is hereby rendered, finding the preventive suspension and the dismissal illegal and ordering the respondents to:
>
> 1. Reinstate complainant to his former position without loss of seniority rights and other benefits appurtenant to the position that complainant received prior to the illegal dismissal;
>
> 2. Pay complainant his backwages which for purpose of appeal is computed to the amount of ₱4,200,000.00 (₱150,000 x 28);
>
> 3. Pay complainant Moral damages in the amount of ₱1,000,000.00 and Exemplary damages in the amount of ₱500,000.00.[23]

On 14 November 2002, Atty. Garcia filed an *Ex-Parte* Motion for the Issuance of a Writ of Execution.[24] On 20 November 2002, Labor Arbiter Reyes issued a Writ of Execution insofar as the reinstatement aspect of the decision was concerned.[25] ETPI and Atty. Hizon filed a Very Urgent Motion to Lift/Quash Writ of Execution on 28 November 2002.[26] Per Sheriff's Return on the Writ of Execution, said writ remained unsatisfied because ETPI and Atty. Hizon refused to reinstate Atty. Garcia to his former position.[27]

On 29 November 2002, Atty. Garcia filed an *Ex-Parte* Motion for the Issuance of an *Alias* Writ of Execution praying that said writ be issued ordering the sheriff to enforce the decision by garnishing the amount of ₱450,000.00 representing his monthly salaries for two months and 13th month pay from any of ETPI's bank accounts.[28] Atty. Garcia manifested that he was no longer filing any responsive pleading to the Very Urgent Motion to

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[23] *Rollo* (G.R. No. 173115), p. 157.

[24] Records, Vol. 4, pp. 1-3.

[25] *Id.* at 8-9.

[26] *Id.* at 10-19.

[27] *Id.* at 7.

[28] *Id.* at 32-34.

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Lift/Quash Writ of Execution because the Labor Arbiter lost jurisdiction over the case when an appeal had been perfected.[29] In an Order dated 10 December 2002, Labor Arbiter Reyes denied the Very Urgent Motion to Lift/Quash Writ of Execution, explaining that it still had jurisdiction over the reinstatement aspect of the decision, notwithstanding the appeal taken, and that the grounds relied upon for the lifting or quashing of the writ were not valid grounds.[30] Labor Arbiter Reyes subsequently issued a 1st *Alias* Writ of Execution dated 11 December 2002 ordering the sheriff to proceed to the premises of ETPI to reinstate Atty. Garcia and/or garnish the amounts prayed for.[31] Per Sheriff's Return dated 17 January 2003, the 1st *Alias* Writ of Execution was satisfied with the amount of ₱450,000.00 being released for proper disposition to Atty. Garcia.[32]

ETPI and Atty. Hizon appealed the decision to the NLRC, filing a Notice of Appeal and Memorandum of Appeal,[33] which appeal was opposed by Atty. Garcia.[34] The appeal was docketed as NLRC NCR CA Case No. 028901-01. ETPI and Atty. Hizon filed a Supplemental Appeal Memorandum dated 23 January 2003 (With Very Urgent Motion for Issuance of Temporary Restraining Order).[35] In a Manifestation *ad Cautelam* dated 28 January 2003, without waiving their right to continue to question the jurisdiction of the Labor Arbiter, they informed the Labor Arbiter that they had filed a Supplemental Appeal Memorandum before the NLRC and asked that all processes relating to the implementation of the reinstatement order be held in abeyance so as not to render moot the reliefs prayed for in said Supplemental Appeal Memorandum.[36] They likewise

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[29] *Id.* at 35-36.

[30] *Id.* at 49-52.

[31] *Id.* at 52Q-52R.

[32] *Id.* at 61.

[33] Records, Vol. 3, pp. 142-242.

[34] *Id.* at 315-369.

[35] *Id.* at 370-387.

[36] Records, Vol. 4, pp. 64-66.

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filed on 31 January 2003 a Very Urgent Motion to Lift/Quash Order of Garnishment *ad Cautelam,* praying that the notice of garnishment on ETPI's bank account with Metrobank, Dela Costa Branch, or with other banks with which ETPI maintained an account and which received said notice of garnishment be immediately lifted/quashed.[37] On 12 February 2003, Atty. Garcia filed his Opposition to said Supplemental Appeal Memorandum.[38]

On 3 February 2003, Atty. Garcia filed an *Ex-Parte* Motion for the Issuance of a 2nd *Alias* Writ of Execution.[39] In an Order dated 5 February 2003, Labor Arbiter Reyes lifted the notice of garnishment on ETPI's bank account with Metrobank, Dela Costa Branch.[40] On 10 February 2003, Labor Arbiter Reyes issued a 2nd Writ of Execution.[41]

In a Manifestation *ad Cautelam*[42] dated 10 February 2003, ETPI and Atty. Hizon said that they filed with the NLRC on 7 February 2003 an Urgent Petition (for Preliminary Injunction With Issuance of Temporary Restraining Order)[43] which prayed, *inter alia*, for the issuance of a temporary restraining order to restrain the execution pending appeal of the order of reinstatement and to enjoin the Labor Arbiter from issuing writs of execution or other processes implementing the decision dated 30 September 2002. They added that they also filed on 7 February 2003 a Notice to Withdraw[44] their Supplemental Appeal Memorandum dated 23 January 2003.

ETPI and Atty. Hizon, without waiving their right to continue to question the jurisdiction of the Labor Arbiter over the case, filed on 18 February 2003 a Motion to Inhibit, seeking the

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[37] *Id.* at 98-102.

[38] Records, Vol. 3, pp. 414-418.

[39] Records, Vol. 4, pp. 144-146.

[40] *Id.* at 244.

[41] *Id.* at 244-A.

[42] Records, Vol. 4, pp. 160-163.

[43] *Id.* at 164-182.

[44] Records, Vol. 3, pp. 401-405.

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inhibition of Labor Arbiter Reyes for allegedly evident partiality in favor of the complainant in issuing writs of execution in connection with the order of reinstatement contained in his decision dated 30 September 2002, despite the pendency of an Urgent Petition (for Preliminary Injunction With Prayer for the Issuance of Temporary Restraining Order) with the NLRC, which sought the restraining of the execution pending appeal of the order of reinstatement.[45] The petition for injunction was docketed as NLRC NCR IC No. 0001193-02. Atty. Garcia filed an opposition,[46] to which ETPI and Atty. Hizon filed a reply.[47] Said motion to inhibit was subsequently granted by Labor Arbiter Reyes.[48] The case was re-raffled to Labor Arbiter Elias H. Salinas.[49]

In an Order dated 26 February 2003, the NLRC, in NLRC NCR IC No. 0001193-02, issued a temporary restraining order (TRO) enjoining Labor Arbiter Reyes from executing pending appeal the order of reinstatement contained in his decision dated 30 September 2002, and from issuing similar writs of execution pending resolution of the petition for preliminary injunction. It directed ETPI and Atty. Hizon to post a bond in the amount of ₱30,000.00 to answer for any damage which Atty. Garcia may suffer by reason of the issuance of the TRO.[50]

On **21 March 2003**, the NLRC rendered its decision in NLRC NCR CA Case No. 028901-01 **reversing the decision of Labor Arbiter** Reyes and **dismissing the case for lack of jurisdiction**. The decretal portion of the decision reads:

WHEREFORE, the decision appealed from is REVERSED, and the instant case DISMISSED for lack of jurisdiction.[51]

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[45] *Id.* at 421-427.

[46] Records, Vol. 4, p. 269.

[47] *Id.* at 270-274.

[48] *Id.* at 275-277.

[49] *Id.* at 284.

[50] *Id.* at 256-258.

[51] *Rollo* (G.R. No. 173115), p. 166.

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The Commission ruled that the dismissal of Atty. Garcia, being ETPI's Vice President, partook of the nature of an intra-corporate dispute cognizable by Regional Trial Courts and not by Labor Arbiters. It added that ETPI and Atty. Hizon were not barred by estoppel from challenging the jurisdiction of the Labor Arbiter over the instant case.

Atty. Garcia moved for the reconsideration[52] of the decision, which ETPI and Atty. Hizon opposed.[53] In a resolution dated 16 December 2003, the motion for reconsideration was denied for lack of merit.[54]

On 26 March 2003, Atty. Garcia filed a Motion to Inhibit, requesting Associate Commissioner Angelita A. Gacutan to inhibit herself from further participating in the deliberation and resolution of the case for manifest bias and partiality in favor of ETPI and Atty. Hizon. The motion was later withdrawn.[55]

On 3 April 2003, the NLRC made permanent the TRO it issued pursuant to its ruling in NLRC NCR CA Case No. 028901-01, that since the Labor Arbiter had no jurisdiction over the case, the decision of the Labor Arbiter dated 30 September 2002 was void.[56]

On 6 March 2004, the resolution dated 16 December 2003 became final and executory. Consequently, on 14 June 2004, an entry of judgment was made recording said resolution in the Book of Entries of Judgments.[57]

On 18 June 2004, ETPI and Atty. Hizon filed a Motion to Discharge and/or Release the Appeal Bond[58] in the amount of ₱5,700,000.00 that they had posted. [59]

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[52] Records, Vol. 3, pp. 480-486.

[53] *Id.* at 501-513.

[54] *Id.* at 584-585.

[55] Records, Vol. 4, pp. 331-332.

[56] *Id.* at 328-330.

[57] Records, Vol. 3, p. 588.

[58] *Id.* at 590-593.

[59] Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002; records, Vol. 3, p. 268.

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On 9 July 2004, Atty. Garcia filed a Motion to Set Aside Finality of Judgment With Opposition to Motion to Discharge Appeal Bond,[60] claiming that he did not receive the resolution dated 16 December 2003 of the NLRC, the same having been sent to his former address at 9 Isidora St., Don Antonio Heights, Diliman, Quezon City, and not to his new address at 4 Pele St., Filinvest 2, Batasan Hills, Quezon City, where he had been receiving all pleadings, Resolutions, Orders and Decisions pertaining to the instant case since April 2001. On 19 July 2004, ETPI and Atty. Hizon filed their opposition thereto. On 23 August 2004, the NLRC, admitting that it missent the resolution dated 16 December 2003 denying Atty. Garcia's motion for reconsideration, issued an order *granting the motion*. It recalled and set aside the Entry of Judgment dated 14 June 2004 and denied the Motion to Discharge and/or Release the Appeal Bond.[61]

In its Motion for Reconsideration dated 17 September 2004, ETPI and Atty. Hizon argued that the NLRC correctly sent the resolution of 16 December 2003 to counsel's allegedly old address, considering that same was counsel's address of record, there being no formal notice filed with the NLRC informing it of a change of address. They contended that the aforesaid resolution had become final and executory, and that Atty. Garcia should bear the consequences of his inequitable conduct and/or gross negligence.[62] On 10 January 2005, the NLRC denied the motion for reconsideration.[63]

On 14 March 2005, Atty. Garcia appealed to the Court of Appeals *via* a Petition for *Certiorari*. It prayed that the Decision dated 21 March 2003 and resolution dated 16 December 2003 of the NLRC be annulled and set aside, and that the decision of the Labor Arbiter dated 30 September 2002 be reinstated.[64] The appeal was docketed as CA-G.R. SP No. 88887.

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[60] Records, Vol. 3, pp. 612-615.

[61] *Id.* at 622-624.

[62] *Id.* at 756-768.

[63] *Id.* at 769-771.

[64] CA *rollo* (CA-G.R. SP No. 88887), pp. 2-81.

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On 28 March 2005, ETPI and Atty. Hizon likewise filed a Petition for *Certiorari* asking that the Orders dated 23 August 2004 and 10 January 2005 of the NLRC be set aside; that its resolution dated 16 December 2003 be declared final and executory; and that the NLRC be directed to discharge and/or release Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002 posted by them.[65] The appeal was docketed as CA-G.R. SP No. 89066.

Upon motion of Atty. Garcia, the two petitions for *certiorari* were consolidated.[66]

On 24 March 2006, the assailed decision of the Court of Appeals was rendered, the dispositive portion reading:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the consolidated petitions are hereby DISMISSED for lack of merit. Without costs in both instances.[67]

The appellate court, on ETPI and Atty. Hizon's argument that Atty. Garcia's petition for *certiorari* was filed out of time, ruled that the NLRC did not commit grave abuse of discretion in liberally applying the rules regarding changes in the address of counsel. It likewise ruled that Atty. Garcia, being the Vice President for Business Support Services and Human Resource Departments of ETPI, was a corporate officer at the time he was removed. Being a corporate officer, his removal was a corporate act and/or an intra-corporate controversy, the jurisdiction of which rested with the Securities and Exchange Commission (now with the Regional Trial Court), and not the Labor Arbiter and the NLRC. It added that ETPI and Atty. Hizon were not estopped from questioning the jurisdiction of the Labor Arbiter before the NLRC on appeal, inasmuch as said issue was seasonably raised by ETPI and Atty. Hizon in their reply memorandum before the Labor Arbiter.

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[65] CA *rollo* (CA-G.R. SP No. 89066), pp. 1-50.

[66] *Id.* at 590 and 698.

[67] *Rollo* (G.R. No. 173115), p. 74.

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On 18 April 2006, Atty. Garcia filed his Motion for Reconsideration.[68] On 20 April 2006, ETPI and Atty. Hizon filed a Motion for Partial Reconsideration.[69] The parties filed their respective comments thereon.[70] On 14 June 2006, the Court of Appeals denied the motions for reconsideration.[71]

Atty. Garcia is now before us *via* a Petition for Review, which he filed on 3 August 2006.[72] The petition was docketed as G.R. No. 173115. On 8 August 2006, he filed an Amended Petition for Review.[73] He prays that the decision of the NLRC dated 21 March 2003 and its resolution dated 16 December 2003, and the decision of the Court of Appeals dated 24 March 2006 and its resolution dated 14 June 2006, be reconsidered and set aside and that the decision of the Labor Arbiter dated 30 September 2002 be affirmed and reinstated.

ETPI and Atty. Hizon are also before us by way of a Petition for *Certiorari*.[74] The petition which was filed on 6 July 2006 was docketed as G.R. Nos. 173163-64.

In our resolution dated 30 August 2006, G.R. Nos. 173163-64 were consolidated with G.R. No. 173115, and the parties were required to comment on the petitions within ten days from notice.[75] Atty. Garcia filed his comment on 13 November 2006,[76] while ETPI and Atty. Hizon filed theirs on 29 November 2006.[77]

On 15 January 2007, we noted the comments filed by the parties and required them to file their Replies to said comments.[78]

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[68] CA *rollo* (CA-G.R. SP No. 88887), pp. 1124-1136.

[69] *Id.* at 1142-1159.

[70] *Id.* at 1166-1172; 1173-1190.

[71] *Id.* at 1192-1193.

[72] *Rollo* (G.R. No. 173115), pp. 7-16.

[73] *Id.* at 124-134.

[74] *Rollo* (G.R. No. 173163-64), pp. 7-16.

[75] *Rollo* (G.R. No. 173115), p. 244.

[76] *Id.* at 246-253.

[77] *Id.* at 257-288.

[78] *Id.* at 289.

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ETPI and Atty. Hizon[79] filed their Reply on 26 February 2007, with Atty. Garcia filing his on 2 March 2007.[80]

On 26 March 2007, we gave due course to the petitions and required the parties to submit the respective memoranda within 30 days from notice.[81] Atty. Garcia submitted his Memorandum[82] on 12 June 2007 and ETPI and Atty. Hizon filed theirs on 13 July 2007.[83] With leave of court, ETPI and Atty. Hizon filed a reply memorandum.[84]

Atty. Garcia raises the lone issue:

WHETHER THE QUESTION OF LEGALITY OR ILLEGALITY OF THE REMOVAL OR TERMINATION OF EMPLOYMENT OF AN OFFICER OF A CORPORATION IS AN INTRA-CORPORATE CONTROVERSY THAT FALLS UNDER THE ORIGINAL EXCLUSIVE JURISDICTION OF THE REGIONAL TRIAL COURTS?[85]

ETPI and Atty. Hizon argue that the Court of Appeals, in ruling that the NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its order dated 23 August 2004 and its resolution dated 10 January 2005, committed grave reversible error and decided questions of substance in a way not in accordance with law and applicable decisions of the Honorable Court, and departed from the accepted and usual course of judicial proceedings, necessitating the Honorable Court's exercise of its power of supervision.

I

THE RESOLUTION DATED 16 DECEMBER 2003 ISSUED BY THE NATIONAL LABOR RELATIONS COMMISSION (SECOND

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[79] *Id.* at 290-305.

[80] *Id.* at 306-311.

[81] *Id.* at 312-313.

[82] *Id.* at 314-335.

[83] *Id.* at 336-398.

[84] *Id.* at 403-435, 436.

[85] *Id.* at 129.

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DIVISION) HAS ALREADY BECOME FINAL AND EXECUTORY AND HAS VESTED UPON PETITIONERS ETPI, *ET AL*. A RIGHT RECOGNIZED AND PROTECTED UNDER THE LAW CONSIDERING THAT:

A. RESPONDENT'S COPY OF SAID RESOLUTION WAS PROPERLY SENT TO HIS ADDRESS OF RECORD, AT THE LATEST ON 15 JANUARY 2004, IN ACCORDANCE WITH WELL ESTABLISHED JURISPRUDENCE. HENCE, RESPONDENT GARCIA HAD ONLY UNTIL 15 MARCH 2004 WITHIN WHICH TO FILE HIS PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS. RESPONDENT GARCIA FAILED TO FILE HIS PETITION FOR *CERTIORARI* BY SAID DATE.

B. NOTWITHSTANDING THE FOREGOING, RESPONDENT GARCIA HAD ACTUAL NOTICE OF THE ISSUANCE OF THE SAME AS OF 24 JUNE 2004. HENCE RESPONDENT GARCIA HAD ONLY UNTIL 23 AUGUST 2004 WITHIN WHICH TO FILE HIS PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS. RESPONDENT GARCIA FAILED TO FILE HIS PETITION FOR *CERTIORARI* BY SAID DATE.

C. EVEN IF THE DATE OF RECEIPT IS RECKONED FROM 15 SEPTEMBER 2005, THE DATE RESPONDENT GARCIA ADMITTED IN HIS PETITION FOR *CERTIORARI* TO BE THE DATE OF HIS RECEIPT OF THE COPY OF THE RESOLUTION DATED 16 DECEMBER 2003 AT HIS ALLEGED NEW ADDRESS, RESPONDENT GARCIA HAD ONLY UNTIL 15 NOVEMBER 2005 TO FILE HIS PETITION FOR *CERTIORARI* DATED 11 MARCH 2005. RESPONDENT GARCIA FAILED TO FILE HIS PETITION FOR *CERTIORARI* BY SAID DATE.

II

THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S LIBERAL APPLICATION OF RULES CONSIDERING THAT A LIBERAL APPLICATION OF RULES CANNOT BE USED TO DEPRIVE A RIGHT THAT HAS ALREADY *IPSO FACTO* VESTED ON PETITIONERS ETPI, *ET AL*.

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III

THE COURT OF APPEALS ERRED IN RULING THAT THE NLRC DID NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING ITS ORDER DATED 23 AUGUST 2004 AND RESOLUTION DATED 10 JANUARY 2005 CONSIDERING THAT RESPONDENT GARCIA MAY NOT ASSAIL THE FINALITY OF RESOLUTION DATED 16 DECEMBER 2003 THROUGH A MERE MOTION.

IV

THE COURT OF APPEALS ERRED IN FAILING TO RULE ON PETITIONERS' COUNTER-MOTION TO CITE RESPONDENT GARCIA IN CONTEMPT OF COURT DESPITE ITS PREVIOUS RESOLUTION DATED 30 MAY 2005 STATING THAT IT SHALL ADDRESS THE SAME IN THE DECISION ON THE MERITS OF THE CASE.[86]

The issue raised by Atty. Garcia – whether the termination or removal of an officer of a corporation is an intra-corporate controversy that falls under the original exclusive jurisdiction of the regional trial courts – is not novel. The Supreme Court, in a long line of cases, has decreed that **a corporate officer's dismissal or removal is always a corporate act and/or an intra-corporate controversy,** over which the Securities and Exchange Commission [SEC] (now the Regional Trial Court)[87] has original and exclusive jurisdiction.[88]

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[86] *Rollo* (G.R. No. 173163-64), pp. 42-44.

[87] Under Republic Act No. 8799, otherwise known as "The Securities Regulation Code" which took effect on August 8, 2000, the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of P.D. No. 902-A has been transferred to the courts of general jurisdiction, or the appropriate RTC. Pursuant thereto, the Supreme Court issued a Resolution dated November 21, 2000 in A.M. No. 00-11-03-SC designating certain branches of the RTC to try and decide cases enumerated in Section 5 of P.D. No. 902-A. On March 13, 2001, the Supreme Court approved the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. No. 8799 which took effect on April 1, 2001. (*Yujuico v. Quiambao*, G.R. No. 168639, 29 January 2007, 513 SCRA 243, 255-256).

[88] *Union Motors Corporation v. National Labor Relations Commission*, 373 Phil. 310, 319 (1999); *Tabang v. National Labor Relations Commission*,

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We have ruled that an intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as the former's franchise, permit or license to operate is concerned; (3) ***between the corporation***, partnership or association ***and its*** stockholders, partners, members or ***officers***; and (4) among the stockholders, partners or associates themselves.[89] In *Lozon v. National Labor Relations Commission*,[90] we declared that Presidential Decree No. 902-A confers on the SEC original and exclusive jurisdiction to hear and decide controversies and cases involving intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments x x x.

Before a dismissal or removal could properly fall within the jurisdiction of the SEC, it has to be first established that the person removed or dismissed was a corporate officer.[91] "Corporate officers" in the context of Presidential Decree No. 902-A[92] are those officers of the corporation who are given that character

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334 Phil. 424, 428 (1997); *De Rossi v. National Labor Relations Commission*, 373 Phil. 17, 24 (1999); *Ongkingco v. National Labor Relations Commission*, 337 Phil. 299, 304-305 (1997); *Easycall Communications Phils., Inc. v. King*, G.R. No. 145901, 15 December 2005, 478 SCRA 102, 109; *Espino v. National Labor Relations Commission*, 310 Phil. 60, 70-71 (1995); *Lozon v. National Labor Relations Commission*, 310 Phil. 1, 9 (1995); *Cagayan de Oro Coliseum, Inc. v. Office of the MOLE*, G.R. No. 71589, 17 December 1990, 192 SCRA 315, 318; *Dy v. National Labor Relations Commission*, 229 Phil. 234, 244 (1986); *Philippine School of Business Administration v. Leano*, 212 Phil. 716, 721 (1984).

[89] *Yujuico v. Quiambao*, *supra* note 87; *Embassy Farms, Inc. v. Court of Appeals*, G.R. No. 80682, 13 August 1990, 188 SCRA 492, 499; *Union Glass & Container Corporation v. Securities and Exchange Commission*, 211 Phil. 222, 230-231 (1983); *Mainland Construction Co., Inc. v. Movilla*, G.R. No. 118088, 23 November 1995, 250 SCRA 290, 294.

[90] *Supra* note 88 at 8.

[91] *Easycall Communications Phils., Inc. v. King*, *supra* note 88 at 109.

[92] The Revised Securities Act.

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by the Corporation Code or by the corporation's by-laws.[93] There are three specific officers whom a corporation must have under Section 25 of the Corporation Code.[94] These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation's by-laws.

In the case before us, the by-laws of ETPI provide:

ARTICLE V
Officers

Section 1. *Number*. – The officers of the Company shall be a Chairman of the Board, a President, one or more Vice-Presidents, a Treasurer, a Secretary, an Assistant Secretary, and such other officers as may be from time to time be elected or appointed by the Board of Directors. One person may hold any two compatible offices.[95]

Atty. Garcia tries to deny he is an officer of ETPI. Not being a corporate officer, he argues that the Labor Arbiter has jurisdiction over the case. One of the corporate officers provided for in the by-laws of ETPI is the Vice-President. It can be gathered from Atty. Garcia's complaint-affidavit that he was Vice President for Business Support Services and Human Resource Departments of ETPI when his employment was terminated effective 16 April 2000. It is therefore clear from the by-laws and from Atty. Garcia himself that he is a corporate officer. One who is included in the by-laws of a corporation in its roster of corporate

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[93] *Easycall Communications Phils., Inc. v. King*, *supra* note 88.

[94] Sec. 25. *Corporate officers, quorum.* – Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

[95] *Rollo* (G.R. No. 173115), pp. 184-185.

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officers is an officer of said corporation and not a mere employee.[96] Being a corporate officer, his removal is deemed to be an intra-corporate dispute cognizable by the SEC and not by the Labor Arbiter.

We agree with both the NLRC and the Court of Appeals that Atty. Garcia's ouster as Vice-President, who is a corporate officer of ETPI, partakes of the nature of an intra-corporate controversy, jurisdiction over which is vested in the SEC (now the RTC). The Labor Arbiter thus erred in assuming jurisdiction over the case filed by Atty. Garcia, because he had no jurisdiction over the subject matter of the controversy.

Having ruled which body has jurisdiction over the instant case, we find it unnecessary, due to mootness, to further discuss and rule on the issues raised by ETPI and Atty. Hizon regarding the NLRC order dated 23 August 2004 granting Atty. Garcia's Motion to Set Aside Finality of Judgment with Opposition to Motion to Discharge Appeal Bond, and its resolution dated 10 January 2005 denying their motion for reconsideration thereon. The decision of the Labor Arbiter, who had jurisdiction over the case, was properly dismissed by the NLRC. Consequently, Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002, posted by ETPI as a requirement for the filing of an appeal before the NLRC, is ordered discharged.

WHEREFORE, premises considered, the petition for *certiorari* of Atty. Garcia in G.R. No. 173115 is hereby *DENIED*. The petition for review on *certiorari* of ETPI and Atty. Hizon in G.R. Nos. 173163-64 is *PARTIALLY GRANTED* insofar as the discharge of Supersedeas Bond No. JCL (15) 00823 SICI Bond No. 75069 dated 18 November 2002 is concerned. This ruling is without prejudice to Atty. Garcia's taking recourse to and seeking relief through the appropriate remedy in the proper forum.

SO ORDERED.

Yñares-Santiago (Chairperson), Austria-Martinez, Nachura, and *Peralta, JJ.,* concur.

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[96] *Union Motors Corporation v. National Labor Relations Commission*, *supra* note 88.