Supreme Court E-Library

THIRD DIVISION

[G.R. No. 89070. May 18, 1992]

BENGUET ELECTRIC COOPERATIVE, INC., *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, PETER COSALAN and BOARD OF DIRECTORS OF BENGUET ELECTRIC COOPERATIVE, INC.,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; TRANSMISSION THROUGH PRIVATE CARRIER NOT A RECOGNIZED MODE OF FILING PLEADINGS; DATE PLEADING DEEMED FILED.— Respondent Board members' contention runs counter to the established rule that transmission through a private carrier or letter-forwarder — instead of the Philippine Post Office — is not a recognized mode of filing pleadings. The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.

2. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; APPEALS; TEN-DAY PERIOD TO PERFECT APPEAL, MANDATORY AND JURISDICTIONAL; CASE AT BAR.— There was, therefore, no reason grounded upon substantial justice and the prevention of serious miscarriage of justice that might have justified the NLRC in disregarding the ten-day reglementary period for perfection of an appeal by the respondent Board members. Accordingly, the applicable rule was that the ten-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature, that failure to file an appeal within the reglementary period renders the assailed decision final and executory and no longer subject to review. The respondent

[*] The Board was composed of the following individuals: (1) Victor Laoyan; (2) Nicasio Aliping; (3) Abundio Awal; (4) Antonio Sudang Pan; and (5) Lorenzo Pilando.

Supreme Court E-Library

Board members had thus lost their right to appeal from the decision of the Labor Arbiter and the NLRC should have forthwith dismissed their appeal memorandum.

3. ID.; ID.; ID.; APPEAL IN CASE AT BAR BEREFT OF MERIT; ILLEGAL SUSPENSION AND ILLEGAL DISMISSAL, ESTABLISHED.— There is another and more compelling reason why the respondent Board members' appeal should have been dismissed forthwith: that appeal was quite bereft of merit. Both the Labor Arbiter and the NLRC had found that the indefinite suspension and termination of services imposed by the respondent Board members upon petitioner Cosalan was illegal. That illegality flowed, firstly, from the fact that the suspension of Cosalan was continued long after expiration of the period of thirty (30) days, which is the maximum period of preventive suspension that could be lawfully imposed under Section 4, Rule XIV of the Omnibus Rules Implementing the Labor Code. Secondly, Cosalan had been deprived of procedural due process by the respondent Board members. He was never informed of the charges raised against him and was given no opportunity to meet those charges and present his side of whatever dispute existed; he was kept totally in the dark as to the reason or reasons why he had been suspended and effectively dismissed from the service of Beneco. Thirdly, respondent Board members failed to adduce any cause which could reasonably be regarded as lawful cause for the suspension and dismissal of respondent Cosalan from his position as General Manager of Beneco. Cosalan was, in other words, denied due process both procedural and substantive. Fourthly, respondent Board members failed to obtain the prior approval of the NEA of their suspension and dismissal of Cosalan, which prior approval was required, *inter alia*, under the subsisting loan agreement between the NEA and Beneco. The requisite NEA approval was subsequently sought by the respondent Board members; no NEA approval was granted. xxx The major difficulty with the conclusion reached by the NLRC is that the NLRC clearly overlooked or disregarded the circumstances under which respondent Board members had in fact acted in the instant case. As noted earlier, the respondent Board members responded to the efforts of Cosalan to take seriously and implement the Audit Memoranda issued by the COA explicitly addressed to the petitioner Beneco, first by stripping Cosalan of the privileges and perquisites attached to his position as General Manager,

Supreme Court E-Library

then by suspending indefinitely and finally dismissing Cosalan from such position. As also noted earlier, respondent Board members offered no suggestion at all of any just or lawful cause that could sustain the suspension and dismissal of Cosalan. They obviously wanted to get rid of Cosalan and so acted, in the words of the NLRC itself, "with indecent haste" in removing him from his position and denying him substantive and procedural due process. Thus, the record showed strong indications that respondent Board members had illegally suspended and dismissed Cosalan precisely because he was trying to remedy the financial irregularities and violations of NEA regulations which the COA had brought to the attention of Beneco. The conclusion reached by the NLRC that "the records do not disclose that the individual Board members were motivated by malice or bad faith," flew in the face of the evidence of record. At the very least, a strong presumption had arisen, which it was incumbent upon respondent Board members to disprove, that they had acted in reprisal against respondent Cosalan and in an effort to suppress knowledge about and remedial measures against the financial irregularities the COA Audits had unearthed. That burden respondent Board members did not discharge.

4. COMMERCIAL LAW; PRIVATE CORPORATIONS; PROVISIONS OF CORPORATION CODE APPLICABLE IN SUPPLEMENTARY MANNER TO ALL CORPORATIONS; ELECTRIC COOPERATIVES ARE CORPORATIONS UNDER PRESIDENTIAL DECREE NO. 269.— We agree with the Solicitor General, firstly, that Section 31 of the Corporation Code is applicable in respect of Beneco and other electric cooperatives similarly situated. Section 4 of the Corporation Code renders the provisions of that Code applicable in a supplementary manner to all corporations, including those with special or individual charters so long as those provisions are not inconsistent with such charters. We find no provision in P.D. No. 269, as amended, that would exclude expressly or by necessary implication the applicability of Section 31 of the Corporation Code in respect of members of the boards of directors of electric cooperatives. Indeed, P.D. No. 269 expressly describes these cooperatives as "corporations:" "Sec. 15. Organization and Purpose. — Cooperative non-stock, non-profit membership corporations may be organized, and electric cooperative corporations heretofore formed or registered under the Philippine

Supreme Court E-Library

non-Agricultural Co-operative Act may as hereinafter provided be converted, under this Decree for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations."

5. ID.; ID.; LIABILITY OF DIRECTORS, TRUSTEES OR OFFICERS; BOARD MEMBERS AND OFFICERS ACTING IN GOOD FAITH WITHIN SCOPE OF THEIR AUTHORITY INCUR NO PERSONAL LIABILITY.— The applicable general rule is clear enough. The Board members and officers of a corporation who purport to act for and in behalf of the corporation, keep within the lawful scope of their authority in so acting, and act in good faith, do not become liable, whether civilly or otherwise, for the consequences of their acts. Those acts, when they are such a nature and are done under such circumstances, are properly attributed to the corporation alone and no personal liability is incurred by such officers and Board members.

6. ID.; ID.; ID.; GROSS NEGLIGENCE OR BAD FAITH OF BOARD MEMBERS IN DIRECTING CORPORATE AFFAIRS ESTABLISHED IN CASE AT BAR.— We agree with the Solicitor General, secondly, that respondent Board members were guilty of "gross negligence or bad faith in directing the affairs of the corporation" in enacting the series of resolutions noted earlier indefinitely suspending and dismissing respondent Cosalan from the position of General Manager of Beneco. Respondent Board members, in doing so, acted beyond the scope of their authority as such Board members. The dismissal of an officer or employee in bad faith, without lawful cause and without the procedural due process, is an act that is *contra legem*. It cannot be supposed that members of boards of directors derive any authority to violate the express mandates of law or the clear legal rights of their officers and employees by simply purporting to act for the corporation they control.

7. ID.; ID.; ID.; CORPORATION NOT LIABLE FOR ULTRA VIRES ACTS OF DIRECTORS DONE IN BAD FAITH.— We believe and so hold, further, that not only are Beneco and respondent Board members properly held solidarily liable for the awards made by the Labor Arbiter, but also that petitioner

Supreme Court E-Library

Beneco which was controlled by and which could act only through respondent Board members, has a right to be reimbursed for any amounts that Beneco may be compelled to pay to respondent Cosalan. Such right of reimbursement is essential if the innocent members of Beneco are not to be penalized for the acts of respondent Board members which were both done in bad faith and ultra vires. The liability-generating acts here are the personal and individual acts of respondent Board members, and are not properly attributed to Beneco itself.

APPEARANCES OF COUNSEL

Raymundo W. Celino for respondent Peter Cosalan.

Reenan Orate for respondent Board of Directors of BENECO.

D E C I S I O N

FELICIANO, *J.*:

Private respondent Peter Cosalan was the General Manager of petitioner Benguet Electric Cooperative, Inc. ("Beneco"), having been elected as such by the Board of Directors of Beneco, with the approval of the National Electrification Administrator, Mr. Pedro Dumol, effective 16 October 1982.

On 3 November 1982, respondent Cosalan received Audit Memorandum No. 1 issued by the Commission on Audit ("COA"). This Memorandum noted that cash advances received by officers and employees of petitioner Beneco in the amount of ₱129,618.48 had been virtually written off in the books of Beneco. In the Audit Memorandum, the COA directed petitioner Beneco to secure the approval of the National Electrification Administration ("NEA") before writing off or condoning those cash advances, and recommended the adoption of remedial measures.

On 12 November 1982, COA issued another Memorandum — Audit Memorandum No. 2 — addressed to respondent Peter Cosalan, inviting attention to the fact that the audit of *per diems* and allowances received by officials and members of the Board of Directors of Beneco showed substantial inconsistencies with

Supreme Court E-Library

the directives of the NEA. The Audit Memorandum once again directed the taking of immediate action in conformity with existing NEA regulations.

On 19 May 1983, petitioner Beneco received the COA Audit Report on the financial status and operations of Beneco for the eight (8) month period ended 30 September 1982. This Audit Report noted and enumerated irregularities in the utilization of funds amounting to ₱37 Million released by NEA to Beneco, and recommended that appropriate remedial action be taken.

Having been made aware of the serious financial condition of Beneco and what appeared to be mismanagement, respondent Cosalan initiated implementation of the remedial measures recommended by the COA. The respondent members of the Board of Beneco reacted by adopting a series of resolutions during the period from 23 June to 24 July 1984. These Board Resolutions abolished the housing allowance of respondent Cosalan; reduced his salary and his representation and commutable allowances; directed him to hold in abeyance all pending personnel disciplinary actions; and struck his name out as a principal signatory to transactions of petitioner Beneco.

During the period from 28 July to 25 September 1984, the respondent Beneco Board of members adopted another series of resolutions which resulted in the ouster of respondent Cosalan as General Manager of Beneco and his exclusion from performance of his regular duties as such, as well as the withholding of his salary and allowances. These resolutions were as follows:

"1. Resolution No. 91-4 dated 28 July 1984:

'xxx that the services of Peter M. Cosalan as General Manager of BENECO is terminated upon approval of the National Electrification Administration:'

2. Resolution No. 151-84 dated September 15, 1984;

'xxx that Peter M. Cosalan is hereby suspended from his position as General Manager of the Benguet Electric Cooperative, Inc. (BENECO) effective as of the start of the

Supreme Court E-Library

office hours on September 24, 1984, until a final decision has been reached by the NEA on his dismissal;'

'xxx that GM Cosalan's suspension from office shall remain in full force and effect until such suspension is sooner lifted, revoked or rescinded by the Board of Directors; that all monies due him are withheld until cleared;'

3. Resolution No. 176-84 dated September 25, 1984;

'xxx that Resolution No. 151-84, dated September 15, 1984 stands as preventive suspension for GM Peter M. Cosalan.'"[1]

Respondent Cosalan nevertheless continued to work as General Manager of Beneco, in the belief that he could be suspended or removed only by duly authorized officials of NEA, in accordance with provisions of P.D. No. 269, as amended by P.D. No. 1645 (the statute creating the NEA, providing for its capitalization, powers and functions and organization), the loan agreement between NEA and petitioner Beneco[2] and the NEA Memorandum of 2 July 1980.[3] Accordingly, on 5 October and 10 November 1984, respondent Cosalan requested petitioner Beneco to release the compensation due him. Beneco, acting through respondent Board members, denied the written request of respondent Cosalan.

Respondent Cosalan then filed a complaint with the National Labor Relations Commissions ("NLRC") on 5 December 1984 against respondent members of the Beneco Board, challenging the legality of the Board resolutions which ordered his suspension and termination from the service and demanding payment of his salaries and allowances. On 18 February 1985, Cosalan amended his complaint to implead petitioner Beneco and respondent Board members, the latter in their respective dual capacities as Directors and as private individuals.

In the course of the proceedings before the Labor Arbiter, Cosalan filed a motion for reinstatement which, although opposed

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[1] Decision of the National Labor Relations Commission, pp. 1-2; Rollo, pp. 19-20.

[2] Records, p. 53.

[3] *Id.,* p. 150.

Supreme Court E-Library

by petitioner Beneco, was granted on 23 October 1987 by Labor Arbiter Amado T. Adquilen. Petitioner Beneco complied with the Labor Arbiter's order on 28 October 1987 through Resolution No. 10-90.

On 5 April 1988, the Labor Arbiter rendered a decision (a) confirming Cosalan's reinstatement; (b) ordering payment to Cosalan of his backwages and allowances by petitioner Beneco and respondent Board members, jointly and severally, for a period of three (3) years without deduction or qualification, amounting to ₱344,000.00; and (3) ordering the individual Board members to pay, jointly and severally, to Cosalan moral damages of ₱50,000.00 plus attorney's fees of ten percent (10%) of the wages and allowances awarded him.

Respondent Board members appealed to the NLRC, and there filed a Memorandum on Appeal. Petitioner Beneco did not appeal, but moved to dismiss the appeal filed by respondent Board members and for execution of judgment. By this time, petitioner Beneco had a new set of directors.

In a decision dated 21 November 1988, public respondent NLRC modified the award rendered by the Labor Arbiter by declaring that petitioner Beneco alone, and not respondent Board members, was liable for respondent Cosalan's backwages and allowances, and by ruling that there was no legal basis for the award of moral damages and attorney's fees made by the Labor Arbiter.

Beneco, through its new set of directors, moved for reconsideration of the NLRC decision, but without success.

In the present Petition for *Certiorari*, Beneco's principal contentions are two-fold: first, that the NLRC had acted with grave abuse of discretion in accepting and giving due course to respondent Board members' appeal although such appeal had been filed out of time; and second, that the NLRC had acted with grave abuse of discretion amounting to lack of jurisdiction in holding petitioner alone liable for payment of the backwages and allowances due to Cosalan and releasing respondent Board members from liability therefor.

Supreme Court E-Library

We consider that petitioner's first contention is meritorious. There is no dispute about the fact that the respondent Beneco Board members received the decision of the Labor Arbiter on 21 April 1988. Accordingly, and because 1 May 1988 was a legal holiday, they had only up to 2 May 1988 within which to perfect their appeal by filing their memorandum on appeal. It is also not disputed that the respondent Board members' memorandum on appeal was posted by registered mail on 3 May 1988 and received by the NLRC the following day.[4] Clearly, the memorandum on appeal was filed out of time.

Respondent Board members, however, insist that their Memorandum on Appeal was filed on time because it was delivered for mailing on 1 May 1988 to the Garcia Communications Company, a licensed private letter carrier. The Board members in effect contend that the date of delivery to Garcia Communications was the date of filing of their appeal memorandum.

Respondent Board members' contention runs counter to the established rule that transmission through a private carrier or letter-forwarder — instead of the Philippine Post Office — is not a recognized mode of filing pleadings.[5] The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of the pleading.[6]

There was, therefore, no reason grounded upon substantial justice and the prevention of serious miscarriage of justice that might have justified the NLRC in disregarding the ten-day reglementary period for perfection of an appeal by the respondent Board members. Accordingly, the applicable rule was that the

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[4] Records, p. 322.

[5] Section 1, Rule 13, Rules of Court.

[6] See, *e.g., Eslabon v. Spouses Ramon Magbanua*, G.R. No. 76571, Resolution dated 1 April 1987; *Pelonio v. Lebrillo*, 83556, Resolution dated 8 November 1988.

Supreme Court E-Library

ten-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature, that failure to file an appeal within the reglementary period renders the assailed decision final and executory and no longer subject to review.[7] The respondent Board members had thus lost their right to appeal from the decision of the Labor Arbiter and the NLRC should have forthwith dismissed their appeal memorandum.

There is another and more compelling reason why the respondent Board members' appeal should have been dismissed forthwith: that appeal was quite bereft of merit. Both the Labor Arbiter and the NLRC had found that the indefinite suspension and termination of services imposed by the respondent Board members upon petitioner Cosalan was illegal. That illegality flowed, firstly, from the fact that the suspension of Cosalan was continued long after expiration of the period of thirty (30) days, which is the maximum period of preventive suspension that could be lawfully imposed under Section 4, Rule XIV of the Omnibus Rules Implementing the Labor Code. Secondly, Cosalan had been deprived of procedural due process by the respondent Board members. He was never informed of the charges raised against him and was given no opportunity to meet those charges and present his side of whatever dispute existed; he was kept totally in the dark as to the reason or reasons why he had been suspended and effectively dismissed from the service of Beneco. Thirdly, respondent Board members failed to adduce any cause which could reasonably be regarded as lawful cause for the suspension and dismissal of respondent Cosalan from his position as General Manager of Beneco. Cosalan was, in other words, denied due process both procedural and substantive. Fourthly, respondent Board members failed to obtain the prior approval of the NEA of their suspension and dismissal of Cosalan, which prior approval was required, *inter alia*, under the subsisting loan agreement between the NEA and Beneco. The requisite NEA approval was subsequently sought by the respondent Board members; no NEA approval was granted.

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[7] *E.g., Armigos v. Court of Appeals*, 179 SCRA 1 (1989); *Jocson v. Baguio*, 179 SCRA 550 (1989); *Chong Guan Trading v. National Labor Relations Commission*, 172 SCRA 831 (1989).

Supreme Court E-Library

In reversing the decision of the Labor Arbiter declaring petitioner Beneco and respondent Board members solidarily liable for the salary, allowances, damages and attorney's fees awarded to respondent Cosalan, the NLRC said:

"xxx. A perusal of the records show that the members of the Board never acted in their individual capacities. They were acting as a Board passing resolutions affecting their general manager. If these resolutions and resultant acts transgressed the law, then BENECO for which the Board was acting in behalf should bear responsibility. *The records do not disclose that the individual Board members were motivated by malice or bad faith, rather, it reveals an intramural power play gone awry and misapprehension of its own rules and regulations*. For this reason, the decision holding the individual board members jointly and severally liable with BENECO for Cosalan's backwages is untenable. The same goes for the award of damages which does not have the proverbial leg to stand on.

The Labor Arbiter below should have heeded his own observation in his decision —

> 'Respondent BENECO as an artificial person could not have, by itself, done anything to prevent it. But because the former have acted while in office and in the course of their official functions as directors of BENECO, xxx'.

Thus, the decision of the Labor Arbiter should be modified conformably with all the foregoing holding BENECO solely liable for backwages and releasing the appellant board members from any individual liabilities."[8] (Italics supplied).

The applicable general rule is clear enough. The Board members and officers of a corporation who purport to act for and in behalf of the corporation, keep within the lawful scope of their authority in so acting, and act in good faith, do not become liable, whether civilly or otherwise, for the consequences of their acts. Those acts, when they are such a nature and are done under such circumstances, are properly attributed to the

[8] *Rollo*, p. 36.

Supreme Court E-Library

corporation alone and no personal liability is incurred by such officers and Board members.[9]

The major difficulty with the conclusion reached by the NLRC is that the NLRC clearly overlooked or disregarded the circumstances under which respondent Board members had in fact acted in the instant case. As noted earlier, the respondent Board members responded to the efforts of Cosalan to take seriously and implement the Audit Memoranda issued by the COA explicitly addressed to the petitioner Beneco, first by stripping Cosalan of the privileges and perquisites attached to his position as General Manager, then by suspending indefinitely and finally dismissing Cosalan from such position. As also noted earlier, respondent Board members offered no suggestion at all of any just or lawful cause that could sustain the suspension and dismissal of Cosalan. They obviously wanted to get rid of Cosalan and so acted, in the words of the NLRC itself, "with indecent haste" in removing him from his position and denying him substantive and procedural due process. Thus, the record showed strong indications that respondent Board members had illegally suspended and dismissed Cosalan precisely because he was trying to remedy the financial irregularities and violations of NEA regulations which the COA had brought to the attention of Beneco. The conclusion reached by the NLRC that "the records do not disclose that the individual Board members were motivated by malice or bad faith," flew in the face of the evidence of record. At the very least, a strong presumption had arisen, which it was incumbent upon respondent Board members to disprove, that they had acted in reprisal against respondent Cosalan and in an effort to suppress knowledge about and remedial measures against the financial irregularities the COA Audits had unearthed. That burden respondent Board members did not discharge.

The Solicitor General has urged that respondent Board members may be held liable for damages under the foregoing circumstance under Section 31 of the Corporation Code which reads as follows:

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[9] See *Pabalan, et al. v. National Labor Relations Commission, et al.*, 184 SCRA 495 (1990). See also *Garcia v. National Labor Relations Commission,* 153 SCRA 639 (1987); *Sunio v. National Labor Relations*

Supreme Court E-Library

"Sec. 31. *Liability of directors, trustees or officers. — Directors* or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or *who are guilty of gross negligence or bad faith in directing the affairs of the corporation* or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees *shall be jointly liable and severally for all damages resulting therefrom suffered by the corporation*, its stockholders or members and other persons xxx" (Italics supplied)

We agree with the Solicitor General, firstly, that Section 31 of the Corporation Code is applicable in respect of Beneco and other electric cooperatives similarly situated. Section 4 of the Corporation Code renders the provisions of that Code applicable in a supplementary manner to all corporations, including those with special or individual charters so long as those provisions are not inconsistent with such charters. We find no provision in P.D. No. 269, as amended, that would exclude expressly or by necessary implication the applicability of Section 31 of the Corporation Code in respect of members of the boards of directors of electric cooperatives. Indeed, P.D. No. 269 expressly describes these cooperatives as "*corporations*:"

"Sec. 15. *Organization and Purpose. — Cooperative* non-stock, non-profit membership *corporations* may be organized, and *electric cooperative corporations* heretofore formed or registered under the Philippine non-Agricultural Co-operative Act may as hereinafter provided be converted, under this Decree for the purpose of supplying, and of promoting and encouraging the fullest use of, service on an area coverage basis at the lowest cost consistent with sound economy and the prudent management of the business of such corporations."[10] (italics supplied)

Commission, 127 SCRA 390 (1984); *Mindanao Motors Line, Inc. v. Court of Industrial Relations*, 6 SCRA 710 (1962):

[10] See also Section 17 of P.D. No. 269, as amended, which requires the members of electric cooperatives to include the abbreviation "Inc." (in the name of the cooperative). Section 18 refers to the organizers of a cooperative as "Incorporators." Sections 19-27 of the same statute refer to "Articles of *Incorporation* of a Cooperative." Section 37 expressly incorporates the provision of limited liability of *members* (but not of directors or other officers) which is the hallmark of corporations:

Supreme Court E-Library

We agree with the Solicitor General, secondly, that respondent Board members were guilty of "gross negligence or bad faith in directing the affairs of the corporation" in enacting the series of resolutions noted earlier indefinitely suspending and dismissing respondent Cosalan from the position of General Manager of Beneco. Respondent Board members, in doing so, acted beyond the scope of their authority as such Board members. The dismissal of an officer or employee in bad faith, without lawful cause and without procedural due process, is an act that is *contra legem*. It cannot be supposed that members of boards of directors derive any authority to violate the express mandates of law or the clear legal rights of their officers and employees by simply purporting to act for the corporation they control.

"No member shall be liable or responsible for any debts of the cooperative and the property of the members shall not be subject to execution therefor."

The legislative intent to make applicable to directors and officers of cooperatives generally (*i.e.*, electric cooperatives, agricultural cooperatives etc.) the provisions of Section 31 of the Corporation Code, was confirmed by Article 46 of the Philippine Cooperative Code (R.A. No. 6938, approved 10 March 1990). Article 46 of the Cooperative Code reads as follows:

"Article 46. *Liability of Directors, Officers and Committee Members.* Directors, officers and committee members, who wilfully and knowingly vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee members shall be liable jointly and severally for all damages or profits resulting therefrom to the cooperative, members and other persons.

When a director, officer or committee member attempts to acquire or acquires, in violation of his duty, any interest or equity adverse to the cooperative in respect to any matter which has been reposed in him in confidence, he shall, as a trustee for the cooperative, be liable for damages and for double the profits which otherwise would have accrued to the cooperative."

Article 122 of the Cooperative Code states that "[e]lectric cooperatives shall be covered by this Code. xxx." Upon the other hand, Article 127 of the same Code provides that electric cooperatives which qualify under this Code "shall fall under the coverage of [P.D. No. 269 as amended]." The Cooperative Code is substantially a reproduction of the general provisions of the Corporation Code.

Supreme Court E-Library

We believe and so hold, further, that not only are Beneco and respondent Board members properly held solidarily liable for the awards made by the Labor Arbiter, but also that petitioner Beneco which was controlled by and which could act only through respondent Board members, has a right to be reimbursed for any amounts that Beneco may be compelled to pay to respondent Cosalan. Such right of reimbursement is essential if the innocent members of Beneco are not to be penalized for the acts of respondent Board members which were both done in bad faith and ultra vires. The liability -generating acts here are the personal and individual acts of respondent Board members, and are not properly attributed to Beneco itself.

WHEREFORE, the Petition for *Certiorari* is *GIVEN DUE COURSE*, the comment filed by the respondent Board members is *TREATED* as their answer, and the decision of the National Labor Relations Commission dated 21 November 1988 in NLRC Case No. RAB-1-0313-84 is hereby *SET ASIDE* and the decision dated 5 April 1988 of Labor Arbiter Amado T. Adquilen hereby *REINSTATED in toto*. In addition, respondent Board members are hereby *ORDERED* to reimburse petitioner Beneco any amounts that it may be compelled to pay to respondent Cosalan by virtue of the decision of Labor Arbiter Amado T. Adquilen. No pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr. (Chairman), Bidin, Davide, Jr., and *Romero, JJ.,* concur.