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ACCORDINGLY, the Court Resolved (1) to grant the motion of Atty. Emiliano L. Gayo praying that he be given until November 7, 1990 to submit his explanation; (2) to note the aforesaid explanation; (3) to deny the motion for reconsideration as well as the supplemental motion for reconsideration; (4) to note the explanation of petitioner Sinai C. Hamada; (5) to order the Regional Trial Court of Baguio City, First Judicial Region, Branch 5, to dismiss Civil Case No. 2160-R and to set aside, effective immediately, the temporary restraining order and any other orders or processes issued in said case; (6) to declare Sinai C. Hamada and Atty. Emiliano L. Gayo in contempt of this Court and ordering them to pay a fine of ₱1,000.00 each within five (5) days from notice; and (7) to suspend Atty. Emiliano L. Gayo from the practice of law for a period of three (3) months effective from notice. Let a copy of this resolution be attached to the personal record of Atty. Emiliano L. Gayo. Let another copy of this resolution be served on Judge Salvador J. Valdez, Jr., presiding judge of said trial court.

SO ORDERED.

Narvasa , Cruz, Gancayco, and *Griño-Aquino, JJ.*, concur.

FIRST DIVISION

[G.R. No. 79762. January 24, 1991]

FORTUNE CEMENT CORPORATION, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION (First Division) and ANTONIO M. LAGDAMEO,** *respondents.*

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SYLLABUS

1. **REMEDIAL LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; INCLUDES JURISDICTION OVER A COMPLAINT FILED BY A CORPORATE EXECUTIVE VICE-PRESIDENT FOR ILLEGAL DISMISSAL, RESULTING FROM A BOARD RESOLUTION DISMISSING HIM AS SUCH OFFICER.**— 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: a) Devices and schemes employed by or *any acts, of the board of directors*, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or stockholders, partners, members of associations or organization registered with the Commission; 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.

2. **COMMERCIAL LAW; CORPORATIONS; CORPORATE OFFICER'S DISMISSAL IS ALWAYS A CORPORATE ACT.**— The Solicitor General pointed out that "a corporate officer's dismissal is always a corporate act and/or intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action." The dispute between petitioner and Lagdameo is within the original and exclusive jurisdiction of the SEC.

3. **REMEDIAL LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION; POWER OR JURISDICTION IS DECISIVE AND WHETHER RENDERS UNNECESSARY A CONSIDERATION OF THE OTHER QUESTIONS RAISED.**— The issue of the SEC's power or

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jurisdiction is decisive and renders unnecessary a consideration of the other questions raised by Lagdameo. Thus did this Court rule in the case of *Dy vs. National Labor Relations Commission* which involved a similar situation: "It is of no moment that Vailoces, in his amended complaint, seeks other reliefs which would seemingly fall under the jurisdiction of the Labor Arbiter, because a closer look at these — underpayment of salary and non-payment of living allowance — shows that they are actually part of the perquisites of his elective position, hence, intimately linked with his relations with the corporation. The question of remuneration, involving as it does, *a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code.*"

APPEARANCES OF COUNSEL

De Leon, Diokno & Associates Law Offices for petitioner.
Romarie G. Villonco and *George C. Nograles* for private respondent.

D E C I S I O N

GRIÑO-AQUINO, *J.*:

This is a petition for *certiorari* with prayer to annul the resolution dated May 29, 1987 of respondent National Labor Relations Commission (NLRC) reversing the order dated December 3, 1985 of the Labor Arbiter which dismissed private respondent Antonio M. Lagdameo's (Lagdameo for brevity) complaint for Illegal Dismissal (NLRC NCR Case No. 1-228-85) against petitioner Fortune Cement Corporation (FCC for brevity) for lack of jurisdiction.

Lagdameo is a registered stockholder of FCC.

On October 14, 1975, at the FCC Board of Directors' regular monthly meeting, he was elected Executive Vice-President of FCC effective November 1, 1975 (p. 3, *Rollo*).

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Some eight (8) years later, or on February 10, 1983, during a regular meeting, the FCC Board resolved that all of its incumbent corporate officers, including Lagdameo, would be "deemed" retained in their respective positions without necessity of yearly reappointments, unless they resigned or were terminated by the Board (p. 4, *Rollo*).

At subsequent regular meetings held on June 14 and 21, 1983, the FCC Board approved and adopted a resolution dismissing Lagdameo as Executive Vice-President of the company, effective immediately, for loss of trust and confidence (p. 4, *Rollo*).

On June 21, 1983, Lagdameo filed with the National Labor Relations Commission (NLRC), National Capital Region, a complaint for illegal dismissal against FCC (NLRC-NCR Case No. 1-228-85) alleging that his dismissal was done without a formal hearing and investigation and, therefore, without due process (p. 63, *Rollo*).

On August 5, 1985, FCC moved to dismiss Lagdameo's complaint on the ground that his dismissal as a corporate officer is a purely intra-corporate controversy over which the Securities and Exchange Commission (SEC) has original and exclusive jurisdiction.

The labor Arbiter granted the motion to dismiss (p. 22, *Rollo*). On appeal, however, the NLRC set aside the Labor Arbiter's order and remanded the case to the Arbitration Branch "for appropriate proceedings" (NLRC Resolution dated April 30, 1987). The NLRC denied FCC's motion for reconsideration (p. 5, *Rollo*). Dissatisfied, FCC filed this petition for *certiorari*.

We find merit in the petition.

The sole issue to be resolved is whether or not the NLRC has jurisdiction over a complaint filed by a corporate executive vice-president for illegal dismissal, resulting from a board resolution dismissing him as such officer.

Section 5 of Presidential Decree No. 902-A vests in the SEC original and exclusive jurisdiction over this controversy:

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"Section 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:

"a) Devices and schemes employed by or *any acts, of the board of directors*, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or stockholders, partners, members of associations or organization registered with the Commission;

"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." (Section 5, P.D. 902-A; Italics supplied.)

In reversing the decision of Labor Arbiter Porfirio E. Villanueva, respondent NLRC held:

"x x x. It is not disputed that complainant Lagdameo was an employee of respondent Fortune Cement Corporation, being then the Executive Vice-President. For having been dismissed for alleged loss of trust and confidence, complainant questioned his dismissal on such ground and the manner in which he was dismissed, claiming that no investigation was conducted, hence, there was and is denial of due process. Predicated on the above facts, it is clear to Us that a labor dispute had arisen between the appellant and the respondent corporation, a dispute which falls within the original and exclusive jurisdiction of the NLRC. A labor dispute as defined in the Labor Code includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing or arranging the terms and conditions of employment regardless of whether or not the disputants stand in the proximate relations of employers and employees." (pp. 16-17, *Rollo*).

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The Solicitor General, declining to defend public respondent in its pleading entitled "Manifestation in Lieu of Comment," aptly observed:

"The position of 'Executive Vice-President,' from which private respondent Lagdameo claims to have been illegally dismissed, is an elective corporate office. He himself acquired that position through election by the corporation's Board of Directors, although he also lost the same as a consequence of the latter's resolution.

"Indeed the election, appointment and/or removal of an executive vice-president is a prerogative vested upon a corporate board.

"And it must be, not only because it is a practice observed in petitioner Fortune Cement Corporation, but more so, because of an express mandate of law." (p. 65, *Rollo.*)

The Solicitor General pointed out that "a corporate officer's dismissal is always a corporate act and/or intra-corporate controversy and that nature is not altered by the reason or wisdom which the Board of Directors may have in taking such action." The dispute between petitioner and Lagdameo is of the class described in Section 5, par. (c) of Presidential Decree No. 902-A, hence, within the original and exclusive jurisdiction of the SEC. The Solicitor General recommended that the petition be granted and NLRC-NCR Case No. 1-228-85 be dismissed by respondent NLRC for lack of jurisdiction (p. 95, *Rollo*).

In *PSBA vs. Leaño* (127 SCRA 778), this Court, confronted with a similar controversy, ruled that the SEC, not the NLRC, has jurisdiction:

"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."

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Lagdameo claims that his dismissal was wrongful, illegal, and arbitrary, because the "irregularities" charged against him were not investigated (p. 85, *Rollo*); that the case of *PSBA vs. Leaño* (*supra*) cited by the Labor Arbiter finds no application to his case because it is not a matter of corporate office having been declared vacant but one where a corporate officer was dismissed without legal and factual basis and without due process; that the power of dismissal should not be confused with the manner of exercising the same; that even a corporate officer enjoys security of tenure regardless of his rank (p. 97, *Rollo*); and that the SEC is without power to grant the reliefs prayed for in his complaint (p. 106, *Rollo*).

The issue of the SEC's power or jurisdiction is decisive and renders unnecessary a consideration of the other questions raised by Lagdameo. Thus did this Court rule in the case of *Dy vs. National Labor Relations Commission* (145 SCRA 211) which involved a similar situation:

> "It is of no moment that Vailoces, in his amended complaint, seeks other reliefs which would seemingly fall under the jurisdiction of the Labor Arbiter, because a closer look at these — underpayment of salary and non-payment of living allowance — shows that they are actually part of the perquisites of his elective position, hence, intimately linked with his relations with the corporation. The question of remuneration, involving as it does, *a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code.*" (Italics ours.)

WHEREFORE, the questioned Resolution of the NLRC reversing the decision of the Labor Arbiter, having been rendered without jurisdiction, is hereby reversed and set aside. The decision of the Labor Arbiter dated December 3, 1985 dismissing NLRC-NCR Case No. 1-228-85 is affirmed, without prejudice to private respondent Antonio M. Lagdameo's seeking recourse in the appropriate forum. No costs.

SO ORDERED.

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Narvasa, Gancayco, and *Medialdea, JJ.*, concur.

Cruz, J., no part. Close personal relationship with one of the parties.

THIRD DIVISION

[G.R. No. 91116. January 24, 1991]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARDO GERONES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; SEXUAL INTERCOURSE WITH A WOMAN DEPRIVED OF REASON CONSTITUTES RAPE; REASON. — It is a rule in rape cases that sexual intercourse with a woman who is deprived of reason constitutes rape. This is because while, as in this case, the woman may be 22 years old, her mental capacity may be that of a nine or ten year old child. Hence, she is incapable of giving consent to the sexual intercourse. The necessity of proof beyond reasonable doubt of force or intimidation having been applied is absent.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION FOR RAPE FILED BY THE PROVINCIAL PROSECUTOR BASED ON A COMPLAINT INITIATED BY THE FATHER OF A MENTAL RETARDATE, SUFFICIENT TO CONFER JURISDICTION. — Rule 110, Section 5 also provides that in the case of a deceased or incapacitated person, the State may initiate the criminal action in her behalf. The information filed by the Provincial Prosecutor, the complaint initiated by the father, and the complaint filed by the offended party herself sufficiently confer jurisdiction on the trial court.

3. ID.; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT, GENERALLY ACCORDED GREAT RESPECT. — The factual findings of the trial court as to the guilt of the accused, particularly the trial judge's assessment of the credibility of