

## FIRST DIVISION

[ G.R. No. 209166, July 09, 2018 ]

**DEMETRIO ELLAO Y DELA VEGA, PETITIONER, V. BATANGAS I ELECTRIC COOPERATIVE, INC. (BATELEC I), RAQUEL ROWENA RODRIGUEZ BOARD PRESIDENT, RESPONDENTS.**

### D E C I S I O N

**TIJAM, J.:**

Through this Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, petitioner Demetrio V. Ellao (Ellao) seeks to annul the Decision<sup>[2]</sup> dated April 26, 2013 and Resolution<sup>[3]</sup> dated August 28, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 127281 which reversed the decisions of both the National Labor Relations Commission and the Labor Arbiter on the ground of lack of jurisdiction. The CA ruled that Ellao, as General Manager of respondent Batangas I Electric Cooperative, Inc., (BATELEC I), is a corporate officer and his dismissal is regarded as an intra-corporate controversy, the jurisdiction over which belongs to the Securities and Exchange Commission (SEC), now with the regional trial courts, and not the labor tribunals.

#### The Antecedents

BATELEC I is an electric cooperative organized and existing under Presidential Decree No. 269 (P.D. 269) and is engaged in the business of distributing electric power or energy in the province of Batangas, specifically in Nasugbu, Tuy, Calaca, Balayan, Lemery, San Nicolas, Sta. Teresita, San Luis, Calatagan, Lian and Agoncillo. At the time material to this petition, respondent Raquel Rowena Rodriguez is the President of BATELEC I's Board of Directors.<sup>[4]</sup> Ellao was employed by BATELEC I initially as Office Supplies and Equipment Control Officer on January 4, 1982 until he was appointed as General Manager on June 1, 2006.<sup>[5]</sup>

On February 12, 2009, a complaint was filed by Nestor de Sagun and Conrado Cornejo against Ellao, charging him of committing irregularities<sup>[6]</sup> in the discharge of his functions as General Manager.<sup>[7]</sup> A fact-finding body was created to investigate these charges and in the meantime, Ellao was placed under preventive suspension.<sup>[8]</sup>

Ellao submitted his explanation refuting the charges against him, after which the matter was set for hearing. However, the scheduled hearing was postponed at Ellao's instance. The re-scheduled hearing did not push through, and instead, the fact-finding body issued a report recommending Ellao's termination. On March 13, 2009, the Board of Directors adopted and issued Board Resolution No. 24-09 terminating Ellao as General Manager on the grounds of gross and habitual neglect of duties and responsibilities and willful disobedience or insubordination resulting to loss of trust and confidence.<sup>[9]</sup> On October 2, 2009, Ellao was formally informed of

his dismissal from employment made effective on October 1, 2009.<sup>[10]</sup> On December 9, 2009, the National Electrification Administration (NEA) confirmed BATELEC I's Board Resolution No. 24-09 and approved Ellao's termination.<sup>[11]</sup>

On February 23, 2011, Ellao filed a Complaint for illegal dismissal and money claims before the Labor Arbiter against BATELEC I and/or its President Rowena A. Rodriguez. Alleging illegal dismissal, Ellao complained that the charges against him were unsubstantiated and that there was no compliance with procedural due process as he was not afforded the opportunity to explain and there was no written notice of termination specifying the grounds of his termination.<sup>[12]</sup>

BATELEC I, on the other hand, moved to dismiss Ellao's complaint on the ground that it is the NEA and not the NLRC which has jurisdiction over the complaint. Assuming the NLRC enjoys jurisdiction, BATELEC I nevertheless asserts that Ellao was validly dismissed.<sup>[13]</sup>

The Labor Arbiter rendered his Decision<sup>[14]</sup> affirming jurisdiction over the complaint. He held that while Presidential Decree No. 279 (P.D. 279), the law creating the NEA, as amended by Presidential Decree No. 1645 (P.D. 1645), granted NEA the power to suspend or dismiss any employee of electric cooperatives, the same does not authorize NEA to hear and decide a labor termination case which power is exclusively vested by Presidential Decree No. 442 or the Labor Code, to Labor Arbiters.<sup>[15]</sup> Thus, assuming jurisdiction over the Complaint, the Labor Arbiter held that Ellao was illegally dismissed as the grounds for his dismissal were unsubstantiated.<sup>[16]</sup>

In disposal, the Labor Arbiter held:

WHEREFORE, judgment is hereby made finding the complainant to have been illegally dismissed from employment by the respondents. Concomitantly, the respondents are hereby ordered to reinstate him to his prior position as General manager, without loss of seniority rights and with full backwages which, on date of this Decision is computed at P1,499,106.00 (his monthly salary of P62,462.75 multiplied by twenty four (24) months). If the complainant should reject reinstatement, the respondents are ordered to pay him, in addition to full backwages, a separation pay computed at a full month's pay for every year of service or the amount of P1,686,494.25 (P62,462.75 multiplied by his 27 years of service).

The respondents are further ordered to pay complainant one million pesos in moral damages plus ten percent of the total financial award as attorney's fees.

Other claims are dismissed for lack of merit.

SO ORDERED.<sup>[17]</sup>

BATELEC I interposed its appeal<sup>[18]</sup> before the NLRC while Ellao filed a partial appeal.<sup>[19]</sup> BATELEC I maintains that it is the NEA which has jurisdiction over Ellao's complaint and that in any case, Ellao was validly dismissed. In its supplemental appeal,<sup>[20]</sup> BATELEC I argued that jurisdiction over the subject matter belongs to

the regional trial court pursuant to Presidential Decree No. 902-A as amended by Republic Act No. 8799 and Administrative Matter No. 00-11-03-SC which provides that jurisdiction over intra-corporate disputes are with the regional trial courts.

The NLRC held that BATELEC I is not a corporation registered with the SEC, but that it was formed and organized pursuant to P.D. 269 and that Ellao is not an officer but a mere employee.<sup>[21]</sup> Accordingly, the NLRC, in its Decision<sup>[22]</sup> dated May 21, 2012 denied BATELEC I's appeal and partly granted that of Ellao's, disposing as follows:

WHEREFORE, premises considered, the appeal of respondents is denied for lack of merit. The partial appeal of complainant is Partly Granted in that the cost of living allowance must be included in the computation of his backwages and separation pay and that he must be paid his proportionate 13<sup>th</sup> month pay for the year 2009 and the moral and exemplary damages awarded in his favor is reduced to P100,000.00.

All other dispositions not affected by the modification stands.

SO ORDERED.<sup>[23]</sup>

BATELEC I's motion for reconsideration met similar denial from the NLRC in its Resolution<sup>[24]</sup> dated September 28, 2012. Undaunted, BATELEC I interposed its *certiorari* petition<sup>[25]</sup> before the CA reiterating its argument that the Labor Arbiter and the NLRC lacked jurisdiction over Ellao's complaint, the latter being a corporate officer.

### **The Ruling of the Court of Appeals**

The CA found merit in BATELEC I's *certiorari* petition and found that Ellao, as BATELEC I's General Manager, is a corporate officer. The CA found that under BATELEC I's By-laws, its Board of Directors is authorized to appoint such officers as it may deem necessary. It noted that Ellao was appointed as General Manager by virtue of a board resolution and that Ellao's appointment was duly approved by the NEA Administrator.<sup>[26]</sup> The CA also found that the position of General Manager is specifically provided for under BATELEC I's By-laws. As such, the CA concluded that Ellao's dismissal is considered an intra-corporate controversy which falls under the jurisdiction of the SEC, now the RTC's, and not with the NLRC.

In disposal, the CA pronounced:

**WHEREFORE**, in view of the foregoing premises, the instant petition for certiorari is hereby **GRANTED** and the assailed May 21, 2012 Decision and September 28, 2012 Resolution of the National Labor Relations Commission, Sixth Division in NLRC LAC No. 01-000260-12 (NLRC RABIV Case No. 02-00265-11-B) as well as the October 28, 2011 Decision of the Labor Arbiter are hereby declared as **NULL and VOID** and consequently, SET ASIDE. The illegal dismissal complaint of Demetrio Ellao is hereby dismissed without prejudice to his seeking recourse in the appropriate forum.

**SO ORDERED.**<sup>[27]</sup>

Ellao's motion for reconsideration met similar rebuke from the CA. Hence, resort to the present petition.

### **The Issue**

Ellao presently imputes error on the part of the CA when the latter held that the RTC enjoys jurisdiction based on the CA's alleged erroneous findings that Ellao is a corporate officer and that the controversy involves an intra-corporate dispute. Simply, the issue to be resolved by the Court is whether or not jurisdiction over Ellao's complaint for illegal dismissal belong to the labor tribunals.

### **The Ruling of the Court**

#### **We deny the petition.**

Complaints for illegal dismissal filed by a cooperative officer constitute an intra-cooperative controversy, jurisdiction over which belongs to the regional trial courts.

Ellao's main resistance to the regional trial court's exercise of jurisdiction over his complaint for illegal dismissal rests on his theory that BATELEC I, as a cooperative, is not a corporation registered with the SEC. Registration with the SEC, however, is not the operative factor in determining whether or not the latter enjoys jurisdiction over a certain dispute or controversy.

To lend proper context, It is well to recall that a cooperative, as defined under P.D. 269<sup>[28]</sup>, refers to a "*corporation* organized under Republic Act No. 6038<sup>[29]</sup> or [under P.D. 269] a cooperative supplying or empowered to supply service which has heretofore been organized under the Philippine Non-Agricultural Cooperative Act, whether covered under this Decree or not."<sup>[30]</sup> P.D. 269 further provides that "[c]ooperative non-stock, non-profit membership *corporations* may be organized, and *electric cooperative corporations* heretofore formed or registered under the Philippine non Agricultural Cooperative 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."<sup>[31]</sup> Likewise, by express provision of PD 269, an electric cooperative is hereby vested with all powers necessary or convenient for the accomplishment of its *corporate* purpose.<sup>[32]</sup> Consistently, an electric cooperative is defined under Republic Act No. 9136<sup>[33]</sup> (R.A. 9136) as a "distribution utility organized pursuant to [P.D. 269], as amended, xxx."<sup>[34]</sup>

Thus, organization under P.D. 269 sufficiently vests upon electric cooperatives' juridical personality enjoying corporate powers. Registration with the SEC becomes relevant only when a non-stock, non-profit electric cooperative decides to convert into and register as a stock corporation.<sup>[35]</sup> As such, and even without choosing to convert and register as a stock corporation, electric cooperatives already enjoy powers and corporate existence *akin* to a corporation.

By jurisprudence, termination disputes involving corporate officers are treated differently from illegal dismissal cases lodged by ordinary employees. Oft-cited is the case of *Tabang v. NLRC*<sup>[36]</sup> distinguishing between "officers" and "employees" as follows:

xxx an "office" is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an "employee" usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee.<sup>[37]</sup>

As a rule, the illegal dismissal of an officer or other employee of a private employer is properly cognizable by the labor arbiter pursuant to Article 217 (a)2<sup>[38]</sup> of the Labor Code, as amended.

By way of exception, where the complaint for illegal dismissal involves a corporate officer, the controversy falls under the jurisdiction of the SEC, because the controversy arises out of intra-corporate or partnership relations between and among stockholders, members, or associates, or 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 the controversy concerns their individual franchise or right to exist as such entity; or because the controversy involves the election or appointment of a director, trustee, officer, or manager of such corporation, partnership, or association.<sup>[39]</sup> With the advent of Republic Act No. 8799<sup>[40]</sup> (R.A. 8799) or The Securities Regulation Code, the SEC's jurisdiction over all intra-corporate disputes was transferred to the regional trial courts.<sup>[41]</sup> Since Ellao filed his Complaint for illegal dismissal on February 23, 2011, after the passage and approval of R.A. 8799, his complaint may either fall under the jurisdiction of the labor arbiter or the regional trial courts, depending on his position. If Ellao is determined to be a corporate officer then jurisdiction over his complaint for illegal dismissal is to be treated as an intra-corporate dispute, hence jurisdiction belongs to the regional trial courts.

In *Matling Industrial and Commercial Corporation, et al., v. Ricardo Coros*,<sup>[42]</sup> the Court held that in conformity with Section 25<sup>[43]</sup> of the Corporation Code, "a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office." Citing *Guerrea v. Lezama, et al.*,<sup>[44]</sup> Matling held that the only officers of a corporation were those given that character either by the Corporation Code or by the By-Laws so much so that the rest of the corporate officers could be considered only as employees or subordinate officials.

Here, the position of General Manager is expressly provided for under Article VI, Section 10 of BATELEC I's By-laws, enumerating the cooperative offices as follows:

## **ARTICLE VI- OFFICERS**

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### **SECTION 10. General Manager**

a. The management of the Cooperative shall be vested in a General Manager who shall be appointed by the Board and who shall be responsible to the Board for performance of his duties as set forth in a position description adopted by the Board, in conformance with