



Republic of the Philippines
Supreme Court
 Manila

EN BANC

**TECHNICAL EDUCATION AND
 SKILLS DEVELOPMENT
 AUTHORITY (TESDA),**
 Petitioner,

G.R. No. 204869

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 ABAD,
 VILLARAMA, JR.,
 PEREZ,
 MENDOZA,
 REYES,
 PERLAS-BERNABE, and
 LEONEN, JJ.

- versus -

**THE COMMISSION ON AUDIT,
 CHAIRPERSON MA. GRACIA M.
 PULIDO TAN, COMMISSIONER
 JUANITO G. ESPINO, JR., and
 COMMISSIONER HEIDI L.
 MENDOZA,**

Respondents.

Promulgated:
MARCH 11, 2014

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DECISION

CARPIO, J.:

The Case

This is a petition for certiorari¹ with prayer for issuance of temporary restraining order or writ of preliminary injunction to annul Decision No. 2012-210² of the Commission on Audit (COA). The COA disallowed payments of Extraordinary and Miscellaneous Expenses (EME) by the Technical Education and Skills Development Authority (TESDA) to its officials.

¹ Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

² *Rollo*, pp. 25-29. Signed by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Juanito G. Espino, Jr., and Commissioner Heidi L. Mendoza.

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The Facts

Upon post audit, the TESDA audit team leader discovered that for the calendar years 2004-2007, TESDA paid EME twice each year to its officials from two sources: (1) the General Fund for locally-funded projects, and (2) the Technical Education and Skills Development Project (TESDP) Fund for the foreign-assisted projects. The payment of EME was authorized under the General Provisions of the General Appropriations Acts of 2004, 2005,³ 2006 and 2007 (2004-2007 GAAs), subject to certain conditions:

x x x *Extraordinary and Miscellaneous Expenses.*— Appropriations authorized herein may be used for extraordinary expenses of **the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:**

- (a) ₱180,000 for each Department Secretary;
- (b) ₱65,000 for each Department Undersecretary;
- (c) ₱35,000 for each Department Assistant Secretary;
- (d) ₱30,000 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director;
- (e) ₱18,000 for each Bureau Regional Director; and
- (f) ₱13,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses **not exceeding Fifty Thousand Pesos (₱50,000) for each of the offices under the above named officials** are authorized.⁴ (Emphasis supplied)

On 15 May 2008, the audit team issued Notice of Disallowance No. 08-002-101 (04-06)⁵ disallowing the payment of EME amounting to ₱5,498,706.60 for being in excess of the amount allowed in the 2004-2007 GAAs. In addition, the EME were disbursed to TESDA officials whose positions were not of equivalent ranks as authorized by the Department of

³In Republic Act No. 9336 or the 2005 GAA, there was a specific appropriation for TESDA's confidential, intelligence, extraordinary and miscellaneous expenses amounting to ₱2,582,000.00 for locally-funded projects and ₱2,562,000.00 for the foreign-assisted projects.

⁴Republic Act No. 9206 or the 2003 GAA (Reenacted for 2004), Section 23; Republic Act No. 9336 or the 2005-2006 GAAs, Section 25; and Republic Act No. 9401 or the 2007 GAA, Section 26, where the amounts were increased to:

x x x x

- (a) ₱220,000 for each Department Secretary;
- (b) ₱90,000 for each Department Undersecretary;
- (c) ₱50,000 for each Department Assistant Secretary;
- (d) ₱38,000 for each head of bureau or organization of equivalent rank, and for each head of a Department Regional Office;
- (e) ₱22,000 for each head of a Bureau Regional Office or organization of equivalent rank; and
- (f) ₱16,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Sixty Thousand Pesos (₱60,000) for each of the offices under the above named officials are herein authorized."

⁵ *Rollo*, pp. 37-39.

Budget and Management (DBM), contrary to the provisions of the 2004-2007 GAAs. Notice of Disallowance No. 08-002-101 (04-06) indicated the persons liable for the excessive payment of EME: the approving officers, payees and the accountants.⁶

On 4 July 2008, TESDA, through its then Director-General Augusto Boboy Syjuco, Jr., filed an Appeal Memorandum⁷ arguing that the 2004-2007 GAAs and the Government Accounting and Auditing Manual allowed the grant of EME from both the General Fund and the TESDP Fund provided the legal ceiling was not exceeded for each fund. According to TESDA, the General Fund and the TESDP Fund are distinct from each other, and TESDA officials who were designated as project officers concurrently with their regular functions were entitled to separate EME from both funds.

The Ruling of the Commission on Audit

In a Decision dated 5 September 2008,⁸ the COA Cluster Director, Cluster VII, National Government Sector, denied the appeal for lack of merit. The COA Cluster Director ruled that:

On the first issue, the GAA provision on EME is very clear to the effect that payment of EME may be taken from any authorized appropriation but shall not exceed the ceiling stated therein. It had been consistently held that when the language of the law is clear and unequivocal it should be given its common and ordinary meaning. If the legislative intent is to grant officials EME of unlimited amount, no limit or ceiling should have been included in the GAA. On the other hand, the Audit Team Leader stated that the inclusion in TESDA budget for EME in TESDP Fund, which was actually found only in the GAA for FY 2005 could not serve as basis for the grant of EME, should not be treated distinctly and separately from EME provision under the General Provisions of the GAA as the officials who were paid the EME from [TESDP Fund] are the same TESDA officials who were already paid EME out [of the General Fund]. It should be emphasized that the designation of TESDA officials as Project Managers in concurrent capacities to offices under TESDP, forms part only of their additional functions without

⁶Id. at 38-39 and 50. The following persons were determined to be liable as payees and approving officers: Director-Generals Alcestis Guiang and Augusto Boboy Syjuco, Jr. The other payees are: Deputy Director Generals Milagros Dawa Hernandez, Santiago M. Yabut, Jr., Rogelio C. Peyuan, and Pastor Guiao; Executive Directors Augusto A. Capiro, Clifford Paragua, Juanito Cuerva, Valerio D. Rola, Gaspar Gayona, Orlando Naag, Marta M. Hernandez, Edwin Gatinao, Noel Villafior, Ma. Susan dela Rama, Ernesto Beltran, Yerma Saulon, Maria Paz Urcia, Agrifina F. Zafra, Washington M. Agustin, Teodoro Sanico, Elmer K. Talavera, Pilar G. de Leon, Irene M. Isaac, Gabriel Genaro Bordado, Cecile B. Gutierrez, Marissa Legaspi, Lourdes T. Reyes, Brenda Furagganan, Imelda B. Taganas and Antonio B. del Rosario; Assistant Project Director Raul K. Tanchico; Assistant Executive Director Francisco B. Jucar, Jr.; PMO Project Manager Anselmo G. Pegtuan; PMO Project Legal Officer Atty. Marjorie Docdocil; and PMO Deputy Project Manager Ma. Magdalena P. Butad. The accountants liable for certifying that the disbursement vouchers were supported by the necessary documents are: Accounting Division Chiefs Cariza A. Dacuma and Guillermina L. Aguilar.

⁷ Id. at 61-67.

⁸ Id. at 42-45.

another appointment. The EME is covered by the compensation attached to his principal office and not for every project handled. x x x.

On the second issue whether officials who are not of equivalent rank as authorized by the DBM, the Audit Team Leader informed that the officials were designated for [positions] which are not included in the Personnel Service Itemization (PSI) and the creation of said positions [was] not supported with authority or approval from the DBM. Neither was there a DBM document identifying the equivalent ranks of these positions as basis for ascertaining the amount of EME to be paid.

On the third issue whether the Regional Directors who were not performing as head of the Bureau or a regional office or organization unit of equal rank, because of their reassignment to the Office of the Director[-]General, the same were not entitled to receive EME since the Director[-]General and its office are already claiming the said amount. There could be no two officials entitled to receive EME although they are listed in the GAA as entitled to receive the same.⁹

On 4 December 2008, TESDA, through its Director-General, filed a petition for review with COA.

In a Decision dated 15 November 2012,¹⁰ COA denied TESDA's petition for lack of merit. The COA adopted the findings of both the TESDA audit team and the COA Cluster Director that the grant of EME exceeded the allowable limit in the 2004-2007 GAAs. The COA emphasized that the provision in the 2004-2007 GAAs that granted EME clearly provided a ceiling for its grant. Accordingly, the COA ruled that the failure of the TESDA officials to adhere to the 2004-2007 GAAs negated their claim of good faith. Thus, the COA ordered them to refund the excess EME they received.

In a Resolution dated 12 March 2013,¹¹ the Court En Banc resolved to excuse the Office of the Solicitor General from representing the COA due to conflict of interest considering that both COA and TESDA are government agencies being represented by it.

The Issues

In this petition, TESDA seeks a reversal and raises the following issues for resolution:

A. THE [COA] GRAVELY ERRED IN DISALLOWING THE PAYMENTS MADE BY TESDA TO ITS OFFICIALS OF

⁹ Id. at 43-44.

¹⁰ Id. at 25-29. The dispositive portion of the COA decision reads:

WHEREFORE, in view of the foregoing, the instant petition for review is hereby DENIED for lack of merit. Accordingly, ND No. [08-002-101 (04-06)] dated May 15, 2008 disallowing the payment of EME to TESDA personnel for CYs 2004-2007 amounting to ₱5,498,706.60 is AFFIRMED.

¹¹ Id. at 82-A.

THEIR [EME] FROM BOTH [GENERAL FUND] AND [TESDP FUND];

B. THE [COA] LIKewise GRAVELY ERRED IN HOLDING THE OFFICERS OF TESDA INDIVIDUALLY LIABLE FOR THE TOTAL DISALLOWANCE IN THE AMOUNT OF ₱5,498,706.60 EVEN IF THEY MAY BE RIGHTFULLY CONSIDERED AS *DE FACTO* OFFICERS IN GOOD FAITH WHO ARE ENTITLED TO EME FOR ACTUAL SERVICES RENDERED;

C. THE [COA] LIKewise GRAVELY ERRED IN HOLDING THAT CONSIDERING THE CEILING SET FORTH BY SECTIONS 23[, 25] AND 26 OF THE GENERAL PROVISIONS OF THE [2004-2007 GAAS], THE CONCERNED TESDA OFFICIALS' CLAIMS FOR EME ARE UNAUTHORIZED AND EXCESSIVE;

D. FINALLY, THE [COA] GRAVELY ERRED IN HOLDING THAT THE CONCERNED TESDA OFFICIALS CANNOT BE CONSIDERED AS *DE FACTO* OFFICERS IN GOOD FAITH AND IN DISREGARDING THE RELEVANT RULING OF THE SUPREME COURT IN THE CASE OF CA[N]TILLO VS. ARRIETA.¹²

The Ruling of the Court

The petition is partly meritorious.

The Constitution vests COA, as guardian of public funds, with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.¹³ The COA is generally accorded complete discretion in the exercise of its constitutional duty and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce.¹⁴

Only when COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court grant a petition assailing COA's actions. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the

¹² Id. at 9.

¹³ The 1987 Constitution, Article IX-D, Section 2 provides:
x x x x

2. The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules, and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

¹⁴*Nazareth v. Villar*, G.R. No. 188635, 29 January 2013, 689 SCRA 385; *Yap v. Commission on Audit*, G.R. No. 158562, 23 April 2010, 619 SCRA 154; *Sanchez v. Commission on Audit*, 575 Phil. 428 (2008).

judgment rendered is not based on law and evidence but on caprice, whim and despotism.¹⁵

We do not find any grave abuse of discretion when COA disallowed the disbursement of EME to TESDA officials for being excessive and unauthorized by law, specifically the 2004-2007 GAAs, to wit:

x x x Extraordinary and Miscellaneous Expenses.— Appropriations authorized herein may be used for extraordinary expenses of **the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:**

- (a) ₱180,000 for each Department Secretary;
- (b) ₱65,000 for each Department Undersecretary;
- (c) ₱35,000 for each Department Assistant Secretary;
- (d) ₱30,000 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director;
- (e) ₱18,000 for each Bureau Regional Director; and
- (f) ₱13,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses *not exceeding Fifty Thousand Pesos (₱50,000)* for each of the offices under the above named officials are authorized.¹⁶ (Boldfacing and italicization supplied)

The GAA provisions are clear that the EME shall *not exceed* the amounts fixed in the GAA. The GAA provisions are also clear that *only* the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them are entitled to claim EME not exceeding the amount provided in the GAA.

The COA faithfully implemented the GAA provisions. COA Circular No. 2012-001¹⁷ states that the amount fixed under the GAA for the National Government offices and officials shall be the ceiling in the disbursement of EME. COA Circular No. 89-300,¹⁸ prescribing the guidelines in the disbursement of EME, likewise states that the amount fixed by the GAA shall be the basis for the control in the disbursement of these funds.

The COA merely complied with its mandate when it disallowed the EME that were reimbursed to officers who were not entitled to the EME, or who received EME in excess of the allowable amount. When the law is clear, plain and free from ambiguity, there should be no room for interpretation but only its application.

¹⁵ *Yap v. Commission on Audit*, supra note 14, citing *Ferrer v. Office of the Ombudsman*, 583 Phil. 50 (2008).

¹⁶Supra note 4.

¹⁷ Dated 14 June 2012.

¹⁸ Dated 21 March 1989.

However, TESDA insists on its interpretation justifying its payment of EME out of the TESDP Fund. It argues that the 2004-2007 GAAs did not prohibit its officials from receiving additional EME chargeable against an authorized funding, the TESDP Fund in this case, for another office to which they have been designated.

We do not find merit in TESDA's argument.

The TESDA is an instrumentality of the government established under Republic Act No. 7796 or the TESDA Act of 1994. Under Section 33 of the TESDA Act, the TESDA budget for the implementation of the Act is included in the annual GAA; hence, the TESDP Fund, being sourced from the Treasury, are funds belonging to the government, or any of its departments, in the hands of public officials.¹⁹ The Constitution provides, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."²⁰ The State Audit Code, which prescribes the guidelines in disbursing public funds, reiterates this important Constitutional provision that there should be an appropriation law or other statutes specifically authorizing payment out of any public funds.²¹

In this case, TESDA failed to point out the law specifically authorizing it to grant additional reimbursement for EME from the TESDP Fund, contrary to the explicit requirement in the Constitution and the law. In *Yap v. Commission on Audit*,²² we upheld COA's disallowance of medical expenses and other benefits such as car maintenance, gasoline allowance and driver's subsidy due to petitioner's failure to point out the law specifically authorizing the same. There is nothing in the 2004-2007 GAAs which allows TESDA to grant its officials **another set of EME from another source of fund** like the TESDP Fund. COA aptly pointed out that not even TESDA's inclusion of EME from both the General Fund and the TESDP Fund in the 2005 GAA justified its payment of excessive EME from 2004 up to 2007.²³ The 2005 GAA provided for a ceiling on EME that TESDA still had to comply despite the grant of EME in the 2005 GAA for foreign-assisted projects.

The position of project officer is not among those listed or authorized to be entitled to EME, namely, the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them. The underlying principle behind the EME is to enable those occupying key positions in the government to meet various financial demands.²⁴ As pointed out by COA, the position of project officer is not even included in

¹⁹ *Professional Video, Inc. v. Technical Education and Skills Development Authority*, G.R. No. 155504, 26 June 2009, 591 SCRA 83.

²⁰ 1987 Constitution, Article VI, Section 29.

²¹ Presidential Decree No. 1445, Section 4.

²² Supra note 14.

²³ *Rollo*, p. 49.

²⁴ COA Circular No. 89-300.

the Personnel Service Itemization or created with authority from the DBM.²⁵ Thus, the TESDA officials were, in fact, merely designated with additional duties, which designation did not entitle them to additional EME. In *Dimaandal v. COA*,²⁶ we held that designation is a mere imposition of additional duties, which does not entail payment of additional benefits. Since the TESDA officials were merely designated with additional duties, the ruling in *Cantillo v. Arrieta*²⁷ on *de facto* officers need not be discussed.

Having settled that COA properly disallowed the payment of excessive EME by TESDA, we proceed to determine whether the TESDA officials should refund the excess EME granted to them.

In *Blaquera v. Alcala*,²⁸ the Court no longer required the officials and employees of different government departments and agencies to refund the productivity incentive bonus they received because there was no *indicia* of bad faith and the disbursement was made in the honest belief that the recipients deserved the amounts. We, however, qualified this *Blaquera* ruling in *Casal v. COA*,²⁹ where we held the approving officials liable for the refund of the incentive award due to their patent disregard of the issuances of the President and the directives of COA. In *Casal*, we ruled that the officials' failure to observe the issuances amounted to gross negligence, which is inconsistent with the presumption of good faith. We applied the *Casal* ruling in *Velasco v. COA*,³⁰ to wit:

x x x the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are accountable for the refund of the subject incentives which they received.

However, with regard to the employees who had no participation in the approval of the subject incentives, they were neither in bad faith nor were they grossly negligent for having received the benefits under the circumstances. The approving officers' allowance of the said awards certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they are therefore under no obligation to refund the subject benefits which they received.³¹ (Emphasis supplied)

Applying by analogy the *Blaquera*, *Casal* and *Velasco* rulings, as well as Section 16 of the 2009 Rules and Regulations on Settlement of

²⁵ *Rollo*, p. 49.

²⁶ 353 Phil. 525 (1998).

²⁷ 158 Phil. 714 (1974).

²⁸ 356 Phil. 678 (1998).

²⁹ 538 Phil. 634 (2006).

³⁰ G.R. No. 189774, 18 September 2012, 681 SCRA 102.

³¹ *Id.* at 117.

Accounts,³² we hold the approving officers of TESDA liable for the excess EME received by them.

The TESDA Act provides that the TESDA Secretariat, headed by the Director-General, shall propose the specific allocation of resources for the programs and projects it shall undertake pursuant to approved national technical education and skills development plan.³³ As chief executive officer of the TESDA Secretariat, the Director-General shall likewise exercise general supervision and control over its technical and administrative personnel.³⁴

In the petition filed before the Court, TESDA alleged that the various memoranda issued by the Director-General authorized the TESDA officials designated as TESDP project officers to claim EME under the TESDP Fund.³⁵ TESDA did not cite a specific provision of law authorizing such EME, but claimed that its grant had been an “institutional practice,”³⁶ showing the lack of statutory authority to pay such EME. Despite this lack of authority for granting additional EME, the then Director-General still permitted EME in excess of the allowable amount and extended EME to officials not entitled to it, patently contrary to the 2004-2007 GAAs. The then Director-General himself received EME from the TESDP Fund amounting to ₱809,691.11,³⁷ contrary to his claim that only executive directors, regional directors or officials holding equivalent positions assigned by him as project officers were entitled to EME from the TESDP Fund.³⁸ The then Director-General likewise insisted on his own interpretation of the 2004-2007 GAAs disregarding the basic principle of statutory construction that when the law is clear, there should be no room for interpretation but only its application. If there was any ambiguity in the law, the then Director-General should have sought clarification from DBM and should not have simply relied on his own interpretation, which was self-serving.

³² Section 16. Determination of Persons Responsible/Liable.

Section 16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

x x x x

16.1.3 Public officers who approve or authorize expenditures shall be held liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

³³ TESDA Act of 1994, Sections 10 (b), (d) and 11.

³⁴ TESDA Act of 1994, Section 11.

³⁵ *Rollo*, p. 7. TESDA stated: “x x x pursuant to the various memoranda issued by the then TESDA Director-General Augusto L. Syjuco, Jr., in his capacity as TESDP Project Director, TESDA Officials who were designated as TESDP Project Officers were authorized to claim EME under [TESDP Fund] in connection with the discharge of their functions related to the implementation of the TESDP. x x x.”

³⁶ *Id.* at 11.

³⁷ *Id.* at 37.

³⁸ *Id.* at 62.

Accordingly, the Director-General's blatant violation of the clear provisions of the Constitution, the 2004-2007 GAAs and the COA circulars is equivalent to gross negligence amounting to bad faith. He is required to refund the EME he received from the TESDP Fund for himself. As for the TESDA officials who had no participation in the approval of the excessive EME, they acted in good faith since they had no hand in the approval of the unauthorized EME. They also honestly believed that the additional EME were reimbursement for their designation as project officers by the Director-General. Being in good faith, they need not refund the excess EME they received.

WHEREFORE, we **AFFIRM** the Commission on Audit Decision No. 2012-210 dated 15 November 2012 with **MODIFICATION**. Only the Director-Generals³⁹ of the Technical Education and Skills Development Authority who approved the excess or unauthorized extraordinary and miscellaneous expenses are ordered to refund the excess extraordinary and miscellaneous expenses which they received for themselves.

SO ORDERED.



ANTONIO T. CARPIO
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

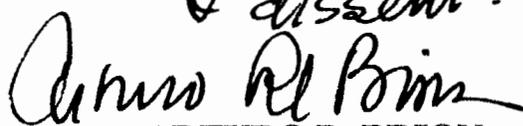


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice

³⁹ Director-General Alcestis Guiang and Director-General Augusto Boboy Syjuco, Jr.

I dissent:

ARTURO D. BRION
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

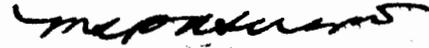

BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice