Republic of the Philippines
Supreme Court
Manila

EN BANC

NINIA P. LUMAUAN,
Petitioner,

- versus -

COMMISSION ON AUDIT,
Respondent.

G.R. NO. 218304

Present:

PERALTA, *Chief Justice,*
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN, and
ROSARIO, *JJ.*

Promulgated:

December 9, 2020

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DECISION

HERNANDO, *J.*:

Before the Court is a Petition for *Certiorari*[1] filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the June 4, 2014 Decision[2] and the February 27, 2015 Resolution[3] of respondent Commission on Audit (COA).

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[1] *Rollo,* pp. 3-7.
[2] Id. at 8-14; penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioner Heidi L. Mendoza.
[3] Id. at 15.

Factual Antecedents

Petitioner Ninia P. Lumauan (Lumauan) was the Acting General Manager of Metropolitan Tuguegarao Water District (MTWD),[4] a government-owned and controlled corporation (GOCC) created pursuant to Presidential Decree (PD) No. 198 or the Provincial Water Utilities Act of 1973, as amended by Republic Act (RA) No. 9286.

In 2009, the Board of Directors of MTWD issued Board Resolution Nos. 2009-0053[5] and 2009-0122,[6] approving the payment of accrued Cost of Living Allowance (COLA) to qualified MTWD employees for calendar years (CYs) 1992 to 1997 in the aggregate amount of ₱1,689,750.00.[7]

However, after post-audit, Supervising Auditor Floricen T. Unida and Audit Team Leader Basilisa T. Garcia issued Notice of Disallowance No. 10-003-101-(09),[8] disallowing the payment of ₱1,689,750.00 for lack of legal basis specifically since the COLA was already deemed integrated into the basic salary of the employees pursuant to Section 12[9] of RA No. 6758, otherwise known as the Compensation and Position Classification Act of 1989, and the Department of Budget and Management (DBM) Corporate Compensation Circular (CCC) No. 10.[10] Held liable under the Notice of Disallowance were petitioner; Ms. Visitacion M. Rimando (Rimando), Division Manager-Administrative; Ms. Marcela Siddayao (Siddayao), Cashier; and the employees of MTWD, as payees.[11]

Petitioner appealed the disallowance to the COA Regional Director,[12] citing the ruling of the Court in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*,[13] where the rights of the PPA employees to claim COLA and amelioration allowance until March 16, 1999 were upheld.

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4 Id. at 8.
5 Id. at 17-18.
6 Id. at 19-20.
7 Id. at 8.
8 Id. at 21-22.
9 SECTION 12. *Consolidation of Allowances and Compensation.* — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.
10 *Rollo*, p. 21.
11 Id.
12 Id. at 9.
13 506 Phil. 382 (2005).

Ruling of the Regional Director

In a November 23, 2011 Decision,[14] Regional Director III Atty. Elwin Gregorio A. Torre denied the appeal for lack of merit. He affirmed the disallowance on the ground that the payment of COLA was prohibited since it was already integrated into the basic salary of the employees.[15]

He opined that after the promulgation of *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit*, the DBM issued National Budget Circular (NBC) No. 2005-502 dated October 26, 2005, which clarified that "payment of allowances and other benefits, such as COLA, which are already integrated in the basic salary, remains prohibited unless otherwise provided by law or ruled by the Supreme Court."[16] Regarding petitioner's defense of good faith, he found the same bereft of any merit considering that the payment of the said benefit was already prohibited since October 26, 2005.[17]

Unfazed, petitioner elevated the matter to respondent COA-Commission Proper (CP).

In response, the Regional Director filed his Answer alleging that the appeal was filed beyond the prescribed period.[18] He claimed that since petitioner already exhausted the six-month appeal period, she should have filed the Appeal Memorandum with respondent COA-CP on the same day she received his Decision.[19]

Ruling of the COA-CP

On June 4, 2014, respondent COA-CP rendered a Decision denying the appeal for late filing and lack of merit. Respondent COA-CP agreed with the observation of the Regional Director that the appeal was belatedly filed.[20] It ruled that the disallowance has already become final and executory because petitioner belatedly filed the Appeal Memorandum or 12 days from receipt of the Decision of the Regional Director.[21] Besides, even if the appeal was timely filed, respondent COA-CP ratiocinated that the appeal should still be denied because petitioner's arguments were bereft of any merit.[22]

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[14] *Rollo*, pp. 23-27.
[15] Id. at 26.
[16] Id.
[17] Id. at 27.
[18] Id. at 10.
[19] Id.
[20] Id.
[21] Id. at 10-11.
[22] Id. at 11.

It reiterated the ruling of the Regional Director that the payment of COLA was prohibited because it was already incorporated in the standardized salary rates of government employees under the general rule of integration.[23] As regards petitioner's defense of good faith, respondent COA-CP found the same unmeritorious considering that under the principle of *solutio indebiti*, all employees of MTWD who received the disallowed COLA were obliged to return the same.[24]

The dispositive portion of the assailed COA-CP Decision reads:

> **WHEREFORE**, the instant appeal is **DENIED** and COA RO No. II Decision (COA-RO2 Case No. 2011-017 dated November 23, 2011) is hereby **AFFIRMED**. Accordingly, ND No. 10-003-101-(09) dated November 22, 2010 on the payment of Cost of Living Allowance to Metropolitan Tuguegarao Water District Employees amounting to ₱1,689,750.00 for calendar years 1992 to 1997 is hereby **SUSTAINED**.[25]

Unfazed, petition filed a Motion for Reconsideration which the COA-CP denied in its February 27, 2015 Resolution.[26]

Hence, petitioner filed the instant Petition for *Certiorari* interposing the core issue of whether respondent COA-CP committed grave abuse of discretion in disallowing the payment of COLA for CYs 1992-1997 to the employees of MTWD.[27]

Petitioner's Arguments

Petitioner contends that contrary to the findings of respondent COA-CP, the appeal was timely filed as the Appeal Memorandum was filed on November 25, 2011, the same day the Decision of the Regional Director was received.[28] Also, citing the case of *Metropolitan Waterworks and Sewerage System (MWSS) v. Bautista*,[29] petitioner insists that the payment of COLA should not have been disallowed because the employees of GOCCs, whether incumbent or not, are entitled to COLA from 1989 to 1999 as a matter of right.[30] And even if the payment of COLA was correctly disallowed, petitioner argues that since the disbursement was made in good faith, she cannot be made liable to refund the same.[31]

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[23] Id. at 11-12.
[24] Id. at 12-13.
[25] Id. at 13.
[26] Id. at 15.
[27] Id. at 4.
[28] Id. at 4-5.
[29] 572 Phil. 383 (2008).
[30] *Rollo*, p. 5.
[31] Id. at 5-6.

Respondent's Arguments

In its Comment,[32] respondent did not discuss the timeliness of the appeal. Instead, it focused on the validity of the disallowance. Respondent maintains that the disallowance was proper because it was made pursuant to law and prevailing jurisprudence.[33] Respondent asserts that the Supreme Court has upheld the inclusion of COLA in the standardized salary rates and has resolved that the non-publication of DBM Circular No. 10 did not render ineffective the validity of Section 12 of RA No. 6758.[34]

Respondent further claims that petitioner cannot avail of the defense of good faith because at the time the COLA was given to the employees and the officers of MTWD, DBM Circular No. 10 had already been reissued and published.[35] As a result, respondent posits that petitioner may no longer rely on the ruling in *Metropolitan Waterworks and Sewerage System v. Bautista* as the defect of the DBM Circular had been cured.[36]

The Court's Ruling

The Petition lacks merit.

The Appeal Memorandum was filed on time.

A careful perusal of the annexes attached to the Petition confirms that the Appeal Memorandum was filed on the same day a copy of the Decision of the Regional Director was received. The Registry Receipt[37] attached to petitioner's Appeal Memorandum indicated that petitioner filed the Appeal Memorandum by registered mail on November 25, 2011. In the Appeal Memorandum,[38] petitioner stated that a copy of the Decision of the Regional Director was received on November 25, 2011. Likewise, the stamp of receipt[39] on the first page of the Decision of the Regional Director showed that it was received by the Administrative Division of MTWD on November 25, 2011.

Based on the foregoing, the Court finds that the Appeal Memorandum was filed on time because it was filed on November 25, 2011, the same day a

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[32] Id. at 54-63.
[33] Id. at 58-60.
[34] Id.
[35] Id. at 60-62.
[36] Id. at 61.
[37] Id. at 34.
[38] Id. at 28-34.
[39] Id. at 23.

copy of the Decision of the Regional Director was received. Thus, there was no reason for respondent COA-CP to deny the appeal for late filing.

The payment of the accrued COLA for CYs 1992 to 1997 was correctly disallowed.

As regards the validity of the disallowance, the Court finds that the grant of accrued COLA for CYs 1992 to 1997 was correctly disallowed.

In *Torcuator v. Commission on Audit*,[40] a case involving the same issue, the Court upheld the disallowance of the payment of COLA because said allowance was deemed already integrated in the compensation of government employees under Section 12 of RA 6758. The Court further declared that said provision was self-executing, and thus the absence of any DBM issuance was immaterial. Quoted below is the discussion of the Court on the matter:

> R.A. No. 6758 standardized the salaries received by government officials and employees. Sec. 12 thereof states:
>
> > SECTION 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
> >
> > Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.
>
> In *Maritime Industry Authority v. [COA] (MIA)* the Court explained the provision of Sec. 12, to wit:
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> > The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the

[40] G.R. No. 210631 (Resolution), March 12, 2019.

> standardized salary. However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:
>
> 1. representation and transportation allowances;
>
> 2. clothing and laundry allowances;
>
> 3. subsistence allowance of marine officers and crew on board government vessels;
>
> 4. subsistence allowance of hospital personnel;
>
> 5. hazard pay; and
>
> 6. allowances of foreign service personnel stationed abroad.
>
> In addition to the non-integrated allowances specified in Sec. 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.

Pursuant to R.A. No. 6758, DBM-CCC No. 10 was issued, which provided, among others, the discontinuance without qualification of all allowances and fringe benefits, including COLA, of government employees over and above their basic salaries. In 1998, the Court declared in the case of *De Jesus* that DBM-CCC No. 10 is without force and effect on account of its non-publication in the Official Gazette or in a newspaper of general circulation, as required by law. In 1999, DBM re-issued its DBM-CCC No. 10 in its entirety and submitted it for publication in the Official Gazette.

Thus, petitioners chiefly argue that since DBM-CCC No. 10 was invalidated and was re-published only in 1999, then the officers and employees of PWD may receive COLA and other fringe benefits for the period of 1992 to 1999.

The Court is not convinced.

As early as *Philippine International Trading Corporation v. [COA]*, the Court held that the nullification of DBM-CCC No. 10 in *De Jesus* does not affect the validity of R.A. No. 6758, to wit:

> There is no merit in the claim of PITC that R.A. No. 6758, particularly Section 12 thereof is void because DBM-Corporate Compensation Circular No. 10, its implementing rules, was nullified in the case of *De Jesus v. [COA]*, for lack of publication. The basis of COA in disallowing the grant of SFI was Section 12 of R.A. No. 6758 and not DBM-CCC No. 10. Moreover, the nullity of DBM-CCC No. 10, will not affect

> the validity of R.A. No. 6758. It is a cardinal rule in statutory construction that statutory provisions control the rules and regulations which may be issued pursuant thereto. Such rules and regulations must be consistent with and must not defeat the purpose of the statute. The validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules. x x x

In *NAPOCOR Employees Consolidated Union v. National Power Corporation*, the Court reiterated that while DBM-CCC No. 10 was nullified in *De Jesus*, there is nothing in that decision suggesting or intimating the suspension of the effectivity of R.A. No. 6758 pending the publication of DBM-CCC No. 10 in the Official Gazette.

In *Gutierrez*, the Court definitively ruled that COLA is integrated in the standard salary of government officials and employees under Sec. 12 of R.A. No. 6758, to wit:

> The drawing up of the above list is consistent with Section 12 above. R.A. [No.] 6758 did not prohibit the DBM from identifying for the purpose of implementation what fell into the class of "all allowances." With respect to what employees' benefits fell outside the term apart from those that the law specified, the DBM, said this Court in a case, needed to promulgate rules and regulations identifying those excluded benefits. This leads to the inevitable conclusion that until and unless the DBM issues such rules and regulations, the enumerated exclusions in items (1) to (6) remain exclusive. Thus so, not being an enumerated exclusion, COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration.
>
> x x x x
>
> Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates. x x x

In *MIA*, the Court emphasized that R.A. No. 6758 deems all allowances and benefits received by government officials and employees as incorporated in the standardized salary, unless excluded by law or an issuance by the DBM. The integration of the benefits and allowances is by legal fiction.

> It was also discussed therein that "[o]ther than those specifically enumerated in [Sec.] 12, non-integrated allowances, incentives, or benefits, may still be identified and granted to government employees. This is categorically allowed in [R.A.] No. 6758. This is also in line with the President's power of control over executive departments, bureaus, and offices. These allowances, however, cannot be granted indiscriminately. Otherwise, the purpose and mandate of [R.A.] No. 6758 will be defeated."
>
> More recently, in *Zamboanga City Water District v. [COA] (ZCWD)*, it was declared by the Court that, in accordance with the *MIA* ruling, the COLA and Amelioration Allowance *(AA)* are already deemed integrated in the standardized salary, particularly, in local water districts.
>
> Verily, the Court has consistently held that Sec. 12 of R.A. No. 6758 is valid and self-executory even without the implementing rules of DBM-CCC No. 10. The said provision clearly states that all allowances and benefits received by government officials and employees are deemed integrated in their salaries. As applied in this case, the COLA, medical, food gift, and rice allowances are deemed integrated in the salaries of the PWD officers and employees. Petitioners could not cite any specific implementing rule, stating that these are non-integrated allowances. Thus, the general rule of integration shall apply.[41] (Citations omitted.)

Petitioner's reliance on the pronouncement of the Court in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit,* reiterated in *Metropolitan Waterworks and Sewerage System v. Bautista,* that employees of GOCC, whether incumbent or not, are entitled to COLA from 1989 to 1999, is misplaced.

The Court in *Maritime Industry Authority (MIA) v. Commission on Audit*[42] already clarified that the ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit* only distinguished the benefits that may be received by government employees hired before and after the effectivity of RA 6758. In fact, in *Republic v. Judge Cortez,*[43] the Court made it clear that *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 v. Commission on Audit* "only applies if the compensation package of those hired before the effectivity of Republic Act No. 6758 actually decreased; or in case of those hired after, if they received a lesser compensation package as a result of the deduction of COLA."[44] Such is not the situation in the instant case.

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41 *Id.*

42 750 Phil. 288, 319 (2015), citing *Napocor Employees Consolidated Union v. National Power Corporation,* 519 Phil. 372 (2006).

43 805 Phil. 294 (2017).

44 Id. at 339.

In view of the foregoing, the Court finds no grave abuse of discretion on the part of respondent COA-CP in disallowing the payment of accrued COLA for CYs 1992 to 1997 in the aggregate amount of ₱1,689,750.00.

Petitioner can be held personally liable for the disallowed benefit to the extent of the amount she actually and individually received pursuant to our ruling in Madera v. Commission on Audit. [45]

In *Madera,* We promulgated the following rules on return of disallowed amounts, *viz.*:

> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein;
>
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> a. Approving and certifying officers who acted in good faith, regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987;
>
> b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
>
> **c. Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.**
>
> d. The Court may likewise excuse the return of recipients based on undue prejudicie, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis. (Emphasis supplied).

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[45] G.R. No. 244128, September 8, 2020.

It must be stressed at the outset that petitioner Lumauan, as Acting General Manager of MTWD, was not the one who approved the grant of the accrued COLA or certified for its funding availability. It was the Board of Directors of MTWD through Board Resolution Nos. 2009-0053[46] and 2009-0122[47] that approved the payment of the accrued COLA.

Petitioner is only a recipient or a passive payee of the allowance. She thus falls under category 2(c) of the above-cited rules on return.

Under the rules on return of disallowed amounts as espoused in *Madera*, and applying the civil law principles on *solutio indebiti* and unjust enrichment, "**[r]ecipients – whether approving or certifying officers or mere passive recipients",** like petitioner Madera in this case, are all "**liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered."**[48] To emphasize, "payees who receive undue payment, **regardless of good faith**, are liable for the return of the amounts they received."[49]

The Court explained the rationale for the rules on return as follows:

> In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates.**
>
> Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipients amounts corresponding to a properly disallowed transaction.
>
> Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility of situations which may constitute *bona fide* exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered) negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on

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[46] *Rollo*, pp. 17-18.
[47] Id. at 19-20.
[48] *Madera v. Commission on Audit,* supra, note 45.
[49] Id.

> standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determinie in the proper case *bona fide* exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.
>
> Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant.x x x[50]

As stated, as an exception to this rule, a payee or recipient may be excused from returning the disallowed amount when he/she has shown that he/she was "actually entitled to what he/[she] received" or "when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant."

We have reviewed the records and found none of the extenuating circumstances to be present.

To recall, the benefit subject in this case is accrued COLA. As pointed out by the COA, petitioner is not entitled to said allowance because it was already incorporated in the standardized salary rates of government employees. Neither was it established that ordering its return would unduly prejudice petitioner. It was also not shown that social justice or humanitarian considerations were extant to the instant case. Thus, there is no justifiable circumstance present that would excuse petitioner from returning the disallowed benefit to the extent of the amount she actually and individually received.

Finally, pursuant to our pronouncement in *Madera*, petitioner should only be held liable to return the disallowed amount corresponding to the amount actually and individually received by her.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED.** The June 4, 2014 Decision and the February 27, 2015 Resolution of the Commission on Audit are **AFFIRMED** with **MODIFICATION** that petitioner Ninia P. Lumauan is **DIRECTED** to **RETURN** the disallowed amount corresponding to the amount she actually and individually received within fifteen (15) days from finality of this Decision.

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[50] Id.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M. V. F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court