



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

BERNADETTE LOURDES B. ABEJO, EXECUTIVE DIRECTOR OF THE INTER-COUNTRY ADOPTION BOARD,

Petitioner,

- versus -

THE COMMISSION ON AUDIT, represented by Chairperson, MICHAEL AGUINALDO,

Respondent.

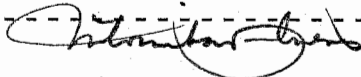
G.R. No. 251967

Present:

GESMUNDO, *CJ*,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,*
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ*.

Promulgated:

June 14, 2022

X-----


DECISION

ZALAMEDA, J.:

Before the Court is a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court filed by petitioner Atty. Bernadette B. Abejo

* On Official Leave.

(Petitioner), assailing Decision No. 2020-058¹ dated 14 January 2020 of the Commission on Audit (COA) Proper. The said Decision affirmed Decision No. 2015-021 dated 17 December 2015 of the COA National Government Section (NGS) – Cluster 6, which, in turn, upheld the validity and propriety of Notice of Disallowance (ND) No. 2011-009-101-(08-10) dated 04 April 2011, disallowing the payment of additional remuneration granted to the members of the Inter-Country Adoption Board (ICAB) in the total amount of ₱162,855.00.

Antecedents

The ICAB was created under Republic Act No. (RA) 8043,² otherwise known as the “Inter-Country Adoption Act of 1995,” to act as the central authority in matters relating to inter-country adoption³ and “policy-making body for purposes of carrying out the provisions of (RA 8043).”⁴ The ICAB is composed of the Secretary of the Department of Social Welfare and Development (DSWD) as *ex-officio* Chairman, together with six other members to be appointed by the President.⁵ Meanwhile, under the direction of the Board is the Inter-Country Adoption Placement Committee (ICPC) that carries out an integrated system and network of selection and matching of applicants and children.⁶ According to petitioner, the ICPC is tasked to screen, review, evaluate, and eventually decide upon and approve applications of prospective adoptive parents (PAPs) or PAPs Dossiers.⁷

Petitioner also alleged that from 2008 to 2010, there had been a heavy volume of inquiries and applications from PAPs that require action from the ICPC. To address the heavy workload and to meet the monthly targets of the ICPC, the members of ICAB were asked to help with the review of the PAPs Dossiers.⁸

To compensate the work performed by the members of ICAB in reviewing the dossiers, Undersecretary Luwalhati F. Pablo, in her capacity as Alternate Chairperson of ICAB, issued an unnumbered memorandum dated 14 August 2008 granting the ICAB members additional remuneration of ₱250.00 for each application reviewed. Another unnumbered Memorandum

¹ *Rollo*, pp. 32-39; penned by Chairperson Michael G. Aguinaldo with Commissioners Jose A. Fabia and Roland C. Pondoc.

² Entitled “An Act Establishing the Rules to Govern Inter-Country Adoption on Filipino Children, and for Other Purposes,” approved on 07 June 1995.

³ Republic Act No. 8043, Sec. 4.

⁴ *Id.*

⁵ *Id.* at Sec. 5.

⁶ Amended Implementing Rules and Regulation of Republic Act No. 8043, Article V, Sec. 13.

⁷ *Rollo*, p. 6.

⁸ *Id.*

dated 16 April 2009 increased this amount to ₱500.00⁹

After audit, the Audit Team Leader and Supervising Auditor assigned to ICAB issued ND No. 2011-009-101-(08-10) which disallowed the additional remuneration to ICAB member amounting to ₱162,855.00.¹⁰ The disallowance was based on the following:

1. The grant has no legal basis.
2. Payment is contrary to Section 4 of Department of Budget and Management (DBM) Budget Circular (BC) No. 2003-5 and Section 49 of RA 9970 or the General Appropriations Act for fiscal year 2010.
3. The Legal Service of the DSWD issued a Memorandum denying the grant of honoraria to members of ICAB.
4. Section 5 of RA 8043 states that ICAB members are only entitled to a *per diem* of ₱1,500.00 per meeting.¹¹

Petitioner, as Executive Director and approving officer, was identified in the ND as the person liable to return the entire disallowed amount.¹²

Petitioner appealed but the COA NGS – Sector 6 affirmed the disallowance. It found that the remuneration received by the ICAB members were intended to be given on top of the maximum amount provided in RA 8043 since the memorandum upon which the additional grant was based made no mention or failed to cite the aforementioned law. The COA NGS – Sector 6 also ruled that while additional work performed by government employees may be compensated, the grant must comply with the pertinent laws and rules. Finally, it rejected petitioner's claims that: (1) the ICAB substantially complied with the rules and regulations of COA; (2) additional remuneration was already part of ICAB's Work and Financial Plan and approved budget but was not questioned or disallowed before; and (3) petitioner should not be compelled to return the disallowed amount as she performed her functions in good faith.¹³

Aggrieved, petitioner filed a petition for review before the COA Proper.¹⁴

⁹ Id. at 33.

¹⁰ Id. at 32-33.

¹¹ Id.

¹² Id. at 43.

¹³ Id. at 28-30.

¹⁴ Id. at 32.

Ruling of the Commission on Audit Proper

On 14 January 2020, the COA Proper rendered its Decision denying the petition for review filed by petitioner. The COA Proper ruled that the additional remuneration given violated Section 5 of RA 8043 that sets a limit to the amount to be received by ICAB members. It also violated DBM BC No. 2003-5, which provides that honoraria may only be received if they are neither paid salaries nor *per diem*. The COA Proper agreed with the COA NGS – Sector 6 that payment of compensation for tasks performed by government employees outside their regular functions is still subject to relevant rules and regulations.¹⁵

The COA Proper also found no merit in petitioner's claim that she was not guilty of negligence in approving the additional compensation. According to the Commission, the pertinent rules and regulations ought to be within petitioner's knowledge considering the position she holds.¹⁶

Opting not to move for the consideration of the COA Proper's Decision, petitioner filed the present petition.¹⁷

Issues

For the Court's resolution are the questions of whether the COA correctly disallowed the additional remuneration given to ICAB members, and whether petitioner should be held liable for it.

Petitioner claims that the payment of the additional remuneration had sufficient basis in law. She points out that the "Intercountry Adoption Board Manual of Operation" grants members of the ICPC honoraria for reviewing adoption applications. For her, it is only fair to give ICAB members the same honoraria especially when they were requested to do task performed not by them but by the ICPC. Further, petitioner asserts that the ICAB members' participation in the review of PAPs Dossiers is a special project under Section 49 of RA 9970 and, thus, should be compensated by way of honoraria. Petitioner also maintains that she was not negligent in approving the payment of the additional remuneration. In so approving the payment, she considered not only the memoranda of Undersecretary Luwalhati, but also the relevant laws and issuances such as RA 8043, RA 9970, and DBM BC 2003-5. Thus, she should not be compelled to reimburse the disallowed

¹⁵ Id. at 36-37.

¹⁶ Id. at 37.

¹⁷ Id. 3-25.



amount as she was acting in good faith.¹⁸

Ruling of the Court

The petition is partially granted.

The petition for certiorari is dismissible on procedural grounds but the interest of substantial justice impels the Court to resolve the same on the merits

Petitioner's statement of material dates and the documents attached to the petition show that she did not move for the reconsideration of the COA Proper's decision. The general rule remains that the filing of a motion for reconsideration is an indispensable condition before the special civil action for *certiorari* could be availed of.¹⁹ The purpose of the requirement is to give the tribunal concerned an opportunity to correct any errors it may have committed in its decision.²⁰ Of course, general rules admit exceptions. This one is no different. The Court accepts any of the following as sufficient excuse for a petitioner's failure to file a motion for reconsideration before filing a petition for *certiorari*:

1. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

2. Where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

3. Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

4. Where, under the circumstances, a motion for reconsideration would be useless;

5. Where petitioner was deprived of due process and there is extreme urgency for relief;

¹⁸ Id. at 12-18.

¹⁹ *Republic v. O.G. Holdings Corp.*, 821 Phil. 814 (2017).

²⁰ *Coca-Cola FEMSA Philippines, Inc. v. Central Luzon Regional Sales Executive Union of Coca-Cola San Fernando (FDO) Plant*, G.R. No. 233300, 03 September 2020.

6. Where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

7. Where the proceedings in the lower court are a nullity for lack of due process;

8. Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

9. Where the issue raised is one purely of law or where public interest is involved.²¹

The second exception applies. Indeed, petitioner raises here the same main issues she raised before, and were passed upon by, the COA Proper: (1) whether the additional remuneration given to the ICAB members has legal basis, and (2) whether petitioner acted in good faith in approving the grant. Thus, the Court deems it proper to resolve the present petition on the merits despite petitioner's procedural misstep.

The additional remuneration or honoraria received by the ICAB members was correctly disallowed in audit.

We agree with the COA Proper that while additional work done outside of a government official's regular function may be compensated, the grant of such compensation must still be in accordance with the applicable laws and rules. This, in fact, was the essence of the Court's ruling in *Sison v. Tablang*, which is being relied upon by petitioner to support her position, albeit erroneously. Thus:

An honorarium is defined as something given not as a matter of obligation but in appreciation for services rendered, a voluntary donation in consideration of services which admit of no compensation in money. Section 15 of R.A. No. 9184 uses the word "may" **which signifies that the honorarium cannot be demanded as a matter of right.**

The government is not unmindful of the tasks that may be required of government employees outside of their regular functions. It agrees that they ought to be compensated; thus, honoraria are given as a recompense for their efforts and performance of substantially similar duties, with substantially similar degrees of responsibility and accountability. **However,**

²¹ *Del Rosario v. ABS-CBN Broadcasting Corp.*, G.R. Nos. 202481, 202495, 202497, 210165, 219125, 222057, 224879, 225101 & 225874, 08 September 2020.

the payment of honoraria to the members of the BAC and the TWG must be circumscribed by applicable rules and guidelines prescribed by the DBM, as provided by law. Section 15 of R.A. No. 9185 is explicit as it states: “For this purpose, the DBM shall promulgate the necessary guidelines.” The word “shall” has always been deemed mandatory, and not merely directory. Thus, in this case, petitioners should have first waited for the rules and guidelines of the DBM before payment of the honoraria. As the rules and guidelines were still forthcoming, petitioners could not just award themselves the straight amount of 25% of their monthly basic salaries as honoraria. This is not the intendment of the law. (Emphasis supplied.)

In this case, RA 8043 and DBM BC No. 2003-5 prevents the ICAB member from receiving additional compensation for the work they have done reviewing the PAPs Dossiers. Section 5 of RA 8043²² is clear as to the limit of the amount of *per diem* the ICAB members are to receive. Meanwhile, Item 4.3 of DBM BC 2003-5²³ expressly prohibits the payment of honoraria to officers already receiving *per diem*, such as the ICAB members. Neither do We find merit in petitioner’s contention that the grant of honoraria to ICAB members is authorized by the *Intercountry Adoption Board Manual of Operation*. In the first place, Section 5²⁴ of said manual pertains exclusively to members of the ICPC and made no mention of members of the ICAB. Further, it is what it is: a manual. It could never defeat an express provision of law, or a rule specifically promulgated to govern a government official’s privilege to receive honoraria. In fact, said Section 5 of the *Intercountry Adoption Board Manual of Operation* subjects the grant of honorarium to the “usual accounting and auditing rules and regulations.”

Finally, the Court cannot subscribe to petitioner’s view that the alleged additional work done by the ICAB members could be considered a “special project” that could be compensated with honoraria pursuant to Section 49 of RA 9970. The Court had discussed in length in *Ngalob v. Commission on Audit*²⁵ the requirements before a task, function, or activity may be considered a “special project.” Thus:

²² Section 5. Composition of the Board. — The Board shall be composed of the Secretary of the Department as ex officio Chairman, and six (6) other members to be appointed by the President for a nonrenewable term of six (6) years: Provided, That there shall be appointed one (1) psychiatrist or psychologist, two (2) lawyers who shall have at least the qualifications of a regional trial court judge, one (1) registered social worker and two (2) representatives from non-governmental organizations engaged in child-caring and placement activities. The members of the Board shall receive a per diem allowance of One thousand five hundred pesos (P1,500) for each meeting attended by them: Provided, further, That no compensation shall be paid for more than four (4) meetings a month.

²³ 4.0 General Guidelines

Heads of entities are authorized to use their respective appropriation for the payment of honoraria only to the following: x x x

4.3 Chairs and members of Commissions/Boards Councils and other similar entities which are hereinafter referred to as a collegial body including the personnel thereof, who are neither paid salaries nor per diems but compensated in the form of honoraria as provided by law, rules and regulations.

²⁴ Section 5. Allowances of Committee Members: A Committee member shall receive an honorarium which shall be determined by the Board subject to usual accounting and auditing rules and regulations.

²⁵ G.R. No. 238882, 05 January 2021.

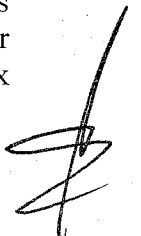
Petitioners are mistaken. The general averment of “pursuing social preparation of the CAR into an autonomous region” does not suffice to prove that a “project” was undertaken to warrant disbursements for the payment of honoraria. Paragraph 2.2 of DBM Circular No. 2007-2 defines a “special project” as **“a duly authorized inter-office or intra-office undertaking of a composite group of government officials and employees which is not among the regular and permanent functions of their respective agencies.** Such undertaking x x x is reform-oriented or developmental in nature, and is contributory to the improvement of service delivery and enhancement of the performance of the core functions of an agency or member agencies.” Conformably, under the Administrative Code of 1987, a “project” is defined as “a component of a program covering a homogenous group of activities that results in the accomplishment of an identifiable output,” while a “program” refers to the functions and activities necessary for the performance of a major purpose for which a government agency is established.” **Paragraph 4.3 of DBM Circular No. 2007-2 is explicit in requiring that a special project plan should be “prepared in consultation with all personnel assigned to a project and approved by the department/agency/lead agency head,”** containing the following:

- title of the project;
- objectives of the project, including the benefits to be derived therefrom;
- outputs or deliverables per project component;
- project timetable;
- skills and expertise required;
- personnel assigned to the project and the duties and responsibilities of each;
- expected deliverables per personnel assigned to the project per project component at specified timeframes; and
- cost by project component, including the estimated cost for honoraria for each personnel based on man-hours to be spent in the project beyond the regular work hours; personnel efficiency should be a prime consideration in determining the man-hours required.

Moreover, paragraph 4.5 of DBM Circular No. 2007-2 was emphatic in requiring that:

4.5 Payment of honorarium shall be made only upon completion and acceptance by the agency head of the deliverable per project component.

Similar conditions for the grant of honoraria to officials and employees assigned to special projects are imposed in the 2009 and 2010 GAAs, *i.e.*, aside from the special project entailing rendition of additional work over and above their regular workload, the special project should be “reform-oriented or developmental, contribute[s] to the improvement of service delivery and enhancement of the performance of the core functions of the agency, and ha[s] specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year; x x x.” (Emphasis supplied)



Apart from her bare allegations, petitioner failed to show any approved special project plan of activities or undertakings as required by DBM Circular 2007-2. In the absence of this approved plan, the Court has no basis to rule whether the ICAB member's review of the PAPs Dossiers constitute a special project.

Despite the propriety of the disallowance, petitioner should not be held liable for the disallowed amount

In finding petitioner liable, the COA Proper found her negligent as the rules and regulations violated by the grant of the disallowed remuneration ought to have been within her knowledge considering the position she holds. We disagree.

In *Madera v. Commission on Audit*,²⁶ the Court had provided a definitive set of rules (*Madera Rules*) in determining the liability of government officers and employees being made to return employee benefits that were disallowed in audit. Thus:

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, in 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 prejudice, social justice considerations, and other bona fide

²⁶ G.R. No. 244128, 08 September 2020.

exceptions as it may determine on a case to case basis.

Rules 2a and 2b of the Madera Rules were based on Sections 38²⁷ and 39,²⁸ in relation to Section 43,²⁹ of the Administrative Code,³⁰ which provide that government officials who approved and certified the grant of disallowed benefits are held solidarily liable to return said disallowed amount when they are found to have acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties. These rules are further anchored on the principle that “public officers are accorded with the presumption of regularity in the performance of their official functions – [t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it.”³¹

Further, this Court accepted the following circumstances as badges of good faith that may be considered in favor of government officers who, in the performance of their official functions, approved or certified the disallowed benefit:

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.³²

²⁷ Section 38. Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

x x x x

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

²⁸ Section 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

²⁹ Section 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

³⁰ Executive Order No. 292, 25 July 1987.

³¹ *Madera v. Commission on Audit*, supra at note 25.

³² J. Leonen's Separate Concurring Opinion, *Madera v. Commission on Audit*, p. 8.

Madera also added that these badges of good faith **should be considered first** before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable; and that the presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved.³³

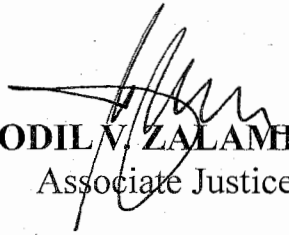
Badges of good faith could be appreciated in favor of petitioner. No prior disallowance of the same benefit has been issued against ICAB. Also, there is no precedent disallowing a similar case in jurisprudence. As a matter of fact, the only other COA disallowance petition involving ICAB was a case also entitled *Abejo v. Commission on Audit*, and docketed as G.R. No. 254570. Said case was resolved by the Court on 29 January 2021, and it pertains to an entirely different incentive. Considering the foregoing, the Court chooses to uphold petitioner's presumption of good faith.

The COA Proper's exoneration of the recipients already attained finality and may no longer be disturbed

The Court, however, observed that the individual members of ICAB who received the additional remuneration were not held liable in the ND. COA's apparent intention is to exonerate them from liability. Their non-inclusion in the ND was no longer raised as an issue here, and therefore, already attained finality. To disturb their exoneration is to violate the doctrine of immutability of final orders or judgments.

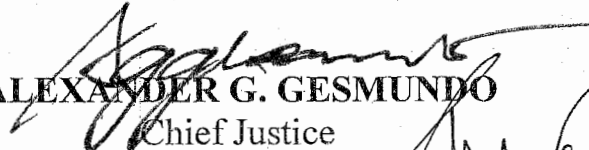
WHEREFORE, the petition is **PARTIALLY GRANTED**. Decision No. 2020-058 dated 14 January 2020 of the Commission on Audit Proper is hereby **AFFIRMED WITH MODIFICATION**. The validity of Notice of Disallowance No. 2011-009-101-(08-10) dated 04 April 2011 is **AFFIRMED**. Nevertheless, petitioner Bernadette Lourdes B. Abejo is **ABSOLVED** from her solidary liability to return the disallowed amount.

SO ORDERED.

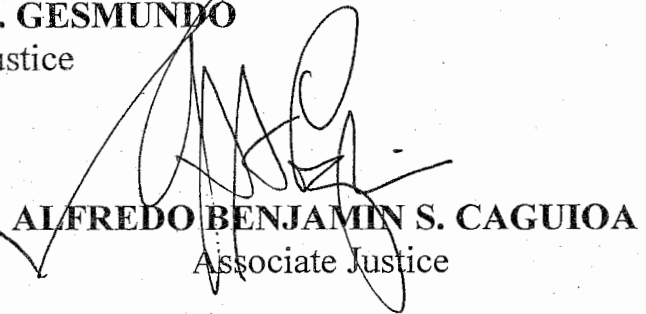

RODIL N. ZALAMEDA
Associate Justice


³³ Supra at note 25.

WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice

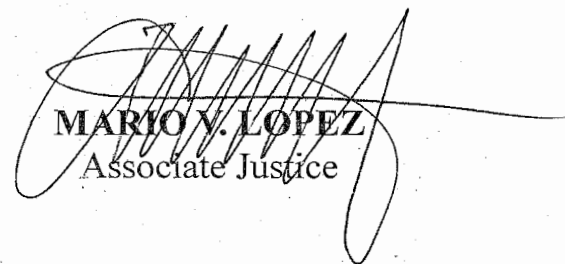

MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

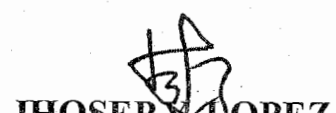
(On Official Leave)
AMY C. LAZARO-JAVIER
Associate Justice

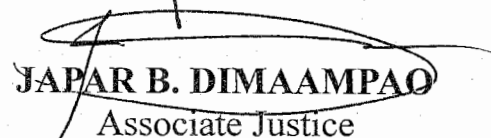

HENRI JEAN PAUL B. INTING
Associate Justice

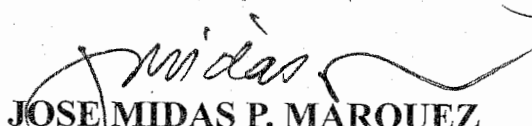

MARIO V. LOPEZ
Associate Justice

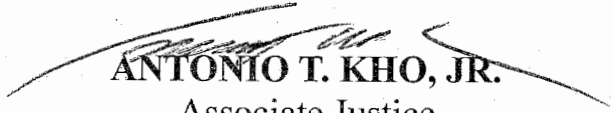

SAMUEL H. GAERLAN
Associate Justice

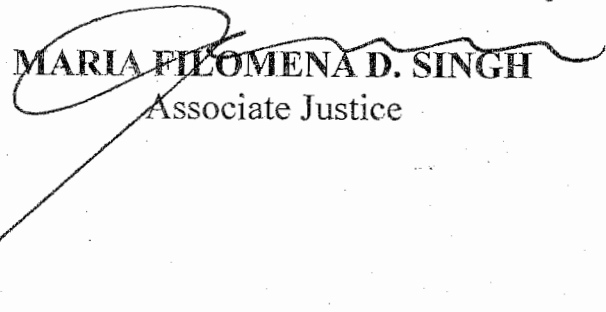

RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

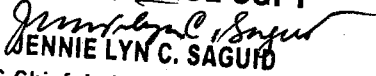

ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to the 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.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

JENNIE LYN C. SAGUID
SC Chief Judicial Staff Officer
Office of the Clerk of Court
Supreme Court of the Philippines