



Republic of the Philippines  
Supreme Court  
Manila

EN BANC

ATTY. ASIS G. PEREZ, as then  
Director of Bureau of Fisheries and  
Aquatic Resources (BFAR), ATTY.  
BENJAMIN F.S. TABIOS, JR., as  
then Officer-In-Charge-Assistant  
Director for Administrative  
Services; LINA F. ZULUETA,  
OIC-Chief Accountant, and  
JERICARDO S. MONDRAGON,  
President and Attorney-in-Fact of  
Employees Union; All of the  
Bureau of Fisheries and Aquatic  
Resources Employees,

*Petitioners,*

- versus -

Hon. MICHAEL G. AGUINALDO,  
Chairperson, COMMISSION ON  
AUDIT (COA), ROLAND C.  
PONDOC, Commissioner-COA,  
and JOSE A. FABIA,  
Commissioner-COA,

*Respondents.*

G.R. No. 252369

Present:

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

Promulgated:

February 7, 2023

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*Antonio G. Gardo* X

RESOLUTION

INTING, J.:

Before the Court is a Petition for *Certiorari*<sup>1</sup> filed under Rule 64, in  
relation to Rule 65, of the Rules of Court assailing Decision No. 2020-

<sup>1</sup> *Rollo*, pp. 3-23. See Petition for *Certiorari* with Prayer for the Issuance of Preliminary Mandatory  
Injunction and/or Temporary Restraining Order.

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160<sup>2</sup> dated January 28, 2020 of the Commission on Audit (COA). The COA upheld Notice of Disallowance No. 14-05-101(11)<sup>3</sup> dated June 10, 2014 covering excess Collective Negotiation Agreement (CNA) incentives paid to the employees of the Bureau of Fisheries and Aquatic Resources (BFAR).

*The Antecedents*

On December 8, 2011, the BFAR paid 351 of its officers and employees a total amount of ₱20,595,549.99 (or equivalent to ₱60,000.00 per employee) representing CNA incentives for calendar year (CY) 2011.<sup>4</sup>

In Notice of Disallowance No. 14-05-101(11) dated June 10, 2014 (ND, for brevity), the COA Audit Team disallowed the amount of ₱12,285,000.00 for being in “excess” of the ₱25,000.00 ceiling per qualified employee provided in Item 3.5<sup>5</sup> of Department of Budget and Management (DBM) Budget Circular (BC) No. 2011-5<sup>6</sup> dated December 26, 2011. The ND identified Atty. Asis G. Perez (Atty. Perez), Atty. Benjamin F.S. Tabios, Jr. (Atty. Tabios, Jr.), Jericardo S. Mondragon (Mondragon) and Lina F. Zulueta (Zulueta) (collectively, petitioners) as liable for the excess payments:

Name	Position/Designation	Nature of Participation
Atty. Asis G. Perez	Bureau Director	Approved the request to grant the release of the CY 2011 CNA Incentive
Dr. Jericardo S. Mondragon	BFAR – Employees Union President	Requested the release of CNA Incentive
Atty. Benjamin F.S. Tabios, Jr.	Assistant Director for Administrative Services	Recommended approval on the release of the CY 2011 CNA Incentive and approved payment on “Box B” of the Disbursement Vouchers

<sup>2</sup> Id. at 26-32. Signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc.

<sup>3</sup> Id. at 40-41.

<sup>4</sup> Id. at 26 and 29.

<sup>5</sup> Item 3.5 of Department of Budget and Management (DBM) Budget Circular (BC) No. 2011-5 provides:

3.5 The CNA Incentive for FY 2011 shall be determined based on the amount of savings generated by an agency following the guidelines herein, but not to exceed P25, 000 per qualified employee.

<sup>6</sup> With the subject, “Supplemental Guidelines on the Grant of Collective Negotiation Agreement (CNA) Incentive for Fiscal Year (FY) 2011,” signed by Secretary Florencio B. Abad.

Ms. Lina F. Zulueta	OIC, Chief Accountant	Certified "Box A" of the Disbursement Voucher on the completeness and propriety of the supporting documents and availability of cash
BFAR Officers and Employees (Annex A)		Received payment <sup>7</sup>

Petitioners appealed<sup>8</sup> the ND to the COA National Government Sector (NGS) – Cluster 8, contending that DBM BC No. 2011-5 dated December 26, 2011 *cannot be given retroactive effect* on the subject CNA incentives which were paid on December 8, 2011, or *prior to its issuance*. Petitioners further invoked good faith in approving and receiving the disallowed excess incentives.<sup>9</sup>

#### *The Ruling of the COA NGS*

In the Decision No. 2015-044<sup>10</sup> dated September 16, 2015, the COA NGS Director<sup>11</sup> denied petitioners' appeal for having been filed beyond the six-month reglementary period (180 days) under Section 4, Rule V of the 2009 Revised Rules of Procedure of the COA.<sup>12</sup> The Director noted that 183 days had elapsed from the date petitioners received the ND on June 16, 2014 when they filed their appeal on December 16, 2014. Holding that the ND already attained finality, the Director found no necessity to discuss the other points raised by petitioners.<sup>13</sup>

Petitioners elevated the case to the COA Proper *via* a petition for review.

#### *The Ruling of the COA*

In the assailed Decision No. 2020-160<sup>14</sup> dated January 28, 2020, the COA affirmed the Decision of the COA NGS Director:

<sup>7</sup> *Rollo*, pp. 40-41.

<sup>8</sup> See Appeal Memorandum, *id.* at 42-49.

<sup>9</sup> *Id.* at 44-46.

<sup>10</sup> *Id.* at 50-54.

<sup>11</sup> Issued by Director IV Ma. Mileguas M. Leyno, *id.* at 54.

<sup>12</sup> Section 4, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit provides:  
Section 4. *When Appeal Taken* - An Appeal must be filed within six (6) months after receipt of the decision appealed from.

<sup>13</sup> *Rollo*, pp. 52-53.

<sup>14</sup> *Id.* at 26-32.

WHEREFORE, premises considered, the Petition for Review of Atty. Asis G. Perez, Atty. Benjamin F.S. Tabios, Jr., Ms. Lina F. Zulueta, and Mr. Jericardo S. Mondragon, all of the Bureau of Fisheries and Aquatic Resources, is hereby DENIED for lack of merit. Accordingly, Commission on Audit National Government Sector–Cluster 8 Decision No. 2015-044 dated September 16, 2015, which affirmed Notice of Disallowance No. 14-05-101(11) dated June 10, 2014, on the payment of Collective Negotiation Agreement Incentive for calendar year 2011 in the total amount of P12,285,000.00, is AFFIRMED.<sup>15</sup> (Emphases omitted.)

Although noting that the petition was belatedly filed, the COA, nevertheless, decided the case on the merits. It found that the BFAR made an overpayment of CNA incentives in the total amount of ₱12,285,000.00 when it paid 351 of its officers and employees the amount of ₱60,000.00 each, in excess of the ₱25,000.00 per employee limitation under DBM BC No. 2011-5.<sup>16</sup>

The COA underscored that the BFAR paid the questioned CNA incentives on December 8, 2011, contrary to Item No. 5.7<sup>17</sup> of DBM BC No. 2006-1<sup>18</sup> requiring payment of CNA incentives *only after the end of the year*. For the COA, had the BFAR observed this requirement, it would not have violated DBM BC No. 2011-5, which was issued before the end of the same year.<sup>19</sup> Further, the COA found that the BFAR failed to comply with Item No. 3.6 of DBM BC No. 2011-5 on the submission to the DBM of reports on accomplishments for the year based on its physical and financial plan pursuant to National BC No. 528 dated January 3, 2011.<sup>20</sup>

Accordingly, the COA sustained the liability of the BFAR officers who certified, authorized, and approved the payment of excess CNA incentives, as well as the employees who individually received the same.<sup>21</sup>

In the petition before the Court, petitioners ascribe grave abuse of discretion to the COA in upholding the subject ND. Petitioners maintain that the payment of CNA incentives was made in accordance with the

<sup>15</sup> Id. at 30-31.

<sup>16</sup> Id. at 28-29.

<sup>17</sup> Item No. 5.7 of DBM BC No. 2006-1 provides:

5.7 The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for last year.

<sup>18</sup> With the subject, “Grant of Collective Negotiation Agreement (CNA) Incentive,” issued on February 1, 2006.

<sup>19</sup> *Rollo*, p. 29.

<sup>20</sup> Id.

<sup>21</sup> Id. at 29-30.

guidelines in force *prior* to the issuance of DBM BC No. 2011-5 setting the ₱25,000.00 limitation per employee.<sup>22</sup>

On the other hand, the COA, through the Office of the Solicitor General (OSG), seeks the outright dismissal of the petition. The COA asserts that petitioners' Appeal Memorandum before the COA NGS was filed out of time and that petitioners failed to file a motion for reconsideration of the assailed COA Decision required under Rule 65 prior to filing their petition for *certiorari*. Further, the OSG maintains that the BFAR violated DBM BC Nos. 2011-5 and 2006-1, which mandate the release of CNA incentives *only* after the end of the year.<sup>23</sup>

### *The Issues*

The core issues for resolution are (1) whether the ₱25,000.00 ceiling under DBM BC 2011-5 dated December 26, 2011 may be retroactively applied to the CNA incentives already released to and received by petitioners for CY 2011; and (2) whether petitioners are liable to return the disallowed excess amounts.

### *The Court's Ruling*

The Court upholds the ND to the extent that it disallowed the payment of excess CNA incentives for failure to comply with DBM BC 2006-1 mandating the release of CNA incentives *only* after the end of the year. Nevertheless, petitioners are not liable to return the disallowed amounts as underscored in the following discussion.

## I

First. The Court notes that the assailed ND had already become final following the belated filing of petitioners' appeal therefrom. In fact, petitioners admit having filed their appeal on the 183<sup>rd</sup> day from their receipt of the ND, or beyond the six-month reglementary period (180 days) under the 2009 COA Revised Rules of Procedure.<sup>24</sup>

While a special civil action for *certiorari* is not a substitute for a lost appeal,<sup>25</sup> the Court has allowed the resort thereof, despite the prior

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<sup>22</sup> Id. at 8-9.

<sup>23</sup> Id. at 69-79.

<sup>24</sup> Id. at 10.

<sup>25</sup> *DENR Employees Union v. Abad*, G.R. No. 204152, January 19, 2021, citing *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222710 (Resolution), September 10, 2019.

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availability of an appeal, under the following instances: “(1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations.”<sup>26</sup>

Petitioners’ case falls under the foregoing exceptions. As will be underscored in the following discussion, petitioners advance meritorious considerations relating to DBM BC No. 2011-5 which the Court, in the recent case of *Confederation for Unity, Recognition and Advancement of Government Employees [COURAGE] v. Abad*<sup>27</sup> (*COURAGE*), similarly passed upon in order to avoid unwarranted denial of justice. Therein, the Court underscored that the challenged circular affects all government employees with existing valid CNAs allowing the grant of CNA incentives.

Second. The failure of petitioners to file a motion for reconsideration of the assailed COA Decision is not fatal to their petition.

As a rule, a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.<sup>28</sup> Through the required motion for reconsideration, the lower court or tribunal is given an opportunity to correct errors imputed to it.<sup>29</sup> In *Philippine International Trading Corp. v. Commission on Audit*,<sup>30</sup> the Court laid down the *exceptions* where a prior motion for reconsideration may be dispensed with, as follows: (1) when the issue raised is purely of law, (2) when public interest is involved, (3) in case of urgency, or (4) “*when the questions raised are the same as those that have already been squarely argued and exhaustively passed upon by the lower court.*”<sup>31</sup>

In the case, petitioners’ position against the retroactive application of DBM BC No. 2011-5 and their invocation of good faith in approving and receiving the disallowed excess incentives, respectively, are the same arguments raised in their appeal from the ND and petition for review before the COA. Thus, a prior motion for reconsideration of the assailed

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<sup>26</sup> Id.

<sup>27</sup> G.R. 200418, November 10, 2020.

<sup>28</sup> See *Phil. International Trading Corp. v. COA*, 461 Phil. 737, 745 (2003).

<sup>29</sup> Id.

<sup>30</sup> 821 Phil. 144 (2017).

<sup>31</sup> Id. at 153, citing *Phil. International Trading Corp. v. COA*, supra. Italics supplied.

COA Decision may be dispensed with.

## II

*Petitioners-payees are not liable to return the disallowed excess CNA incentives they individually received.*

As regards the BFAR officers and employees of the disallowed excess CNA incentives, the non-retroactive application of DBM BC No. 2011-5 is already settled in the factually similar case of *COURAGE*.<sup>32</sup>

In *COURAGE*, the Social Welfare and Development (SWD), through then Secretary Corazon Soliman, issued two memoranda dated October 26, 2011 and December 3, 2011 authorizing CNA grants to its employees in two tranches: a) ₱10,000.00 per employee to be released not later than October 28, 2011, and b) ₱20,000.00 to be released on or before the third week of December 2011. However, pursuant to the supervening DBM BC No. 2011-5 dated December 26, 2011 mandating the ceiling amount of ₱25,000.00 per qualified employee, the SWD subsequently issued a Memorandum dated January 20, 2012 which directed the concerned employees to refund the excess ₱5,000.00 they received.<sup>33</sup>

While sustaining the validity of DBM BC No. 2011-5 placing a ceiling amount on the grant of CNA incentives, the Court declared the Memorandum dated January 20, 2012 *void* on the ground that the CNA incentives in the amount of ₱30,000.00 per employee received by petitioners therein for CY 2011 had already been vested in their behalf. The Court underscored that DBM BC No. 2011-5 was issued and published only on December 26, 2011 and February 25, 2012, respectively.<sup>34</sup> Thus, “it cannot be given retroactive effect so as to force the return of the ‘excess’ [₱]5,000.00 by employees because they received the said [CNA incentives] at the time when no ceiling had been set.”<sup>35</sup> Ruling that the order to return the excess ₱5,000.00 received by the affected employees was erroneous, the Court explained:

[W]e agree with petitioners’ position against the retroactive application of Budget Circular No. 2011-5 to CNA incentives already released to

<sup>32</sup> *Confederation for Unity, Recognition and Advancement of Government Employees [COURAGE] v. Abad*, supra note at 27.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> See Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Confederation for Unity, Recognition and Advancement of Government Employees [COURAGE] v. Abad*, supra note 27, *id.*

the employees.

While the Department of Budget and Management can generally impose conditions for the grant of CNA incentives, in this case, the conditions were imposed after the benefits had already been released and received by the employees. The Department had not put in place a ceiling on CNA incentives when the P30,000.00 CNA incentive—the total amount from the October 26, 2011 and December 3, 2011 memoranda issued by respondent Secretary Soliman—was granted. Budget Circular No. 2011-5, which contains the P25,000.00 ceiling, was issued only on December 26, 2011 and published only on February 25, 2012. Thus, the benefits had already been vested in the employees' behalf.<sup>36</sup>

Accordingly, petitioners who are recipients of the CNA incentives cannot be made liable to return the disallowed excess amount they individually received.

The foregoing, notwithstanding, the Court upholds the ND to the extent that it disallowed the payment for having been made prior to the end of the year 2011 in violation of DBM BC 2006-1.

*Liability of Atty. Perez and Atty.  
Tabios, Jr. as approving officers*

Rule 2(a) of the Rules on Return laid down in *Madera v. Commission on Audit*<sup>37</sup> (*Madera*) provides that “[a]pproving and certifying officers who acted in good faith, in [the] regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return [the disallowed amount] consistent with Section 38 of the Administrative Code of 1987.”<sup>38</sup> Section 38, in particular, essentially provides that it is only upon a showing of *bad faith*, *malice*, or *gross negligence* in the performance of their official duties that the approving and certifying officers may be held solidarily liable for the disallowance.<sup>39</sup>

Good faith denotes “honesty of intention, and *freedom from knowledge of circumstances which ought to put the holder upon*

<sup>36</sup> Id.

<sup>37</sup> G.R. No. 244128, September 8, 2020.

<sup>38</sup> Id.

<sup>39</sup> Executive Order No. (EO) 292, otherwise known as the “Administrative Code of 1987,” signed on July 25, 1987, Book VI, Chapter 5, Section 43 states that “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.” EO 292, Book I, Chapter 9, Section 38 states that “[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.”



*inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even th[r]ough technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious.”<sup>40</sup>*

In the case, the disallowance is predicated upon the gross negligence of petitioners Atty. Perez and Atty. Tabios, Jr. for approving the payment of CNA incentive before the end of 2011. As approving officers, they cannot invoke the defense of good faith in disregarding a very clear requirement—CNA incentives shall be paid only after the end of the year.

However, given that Rule 2(c) of the *Madera* rules excuses petitioners-payees from returning the disallowed excess CNA incentives they individually received, there is nothing more to return. Atty. Perez and Atty. Tabios, Jr. need not refund the disallowed amounts.

*Zulueta and Mondragon are not liable under the ND.*

Zulueta and Mondragon can legally invoke good faith against solidary liability for the disallowed amounts.

It bears underscoring that the basis of the subject disallowance is the illegal premature release of the CNA incentives prior to the end of the year 2011. Under the ND, Zulueta’s participation is limited to merely “certifying the completeness and propriety of the supporting documents and availability of cash.” This act cannot be considered as essential to or part of the underlying policy-making or decision-making of the BFAR that paved the way to the premature illegal release of the CNA incentives. In fact, there are no such findings by the COA in the case.

In *Aleandrino v. COA*,<sup>41</sup> the Court characterized the acts of a treasurer certifying the availability of funds and supporting documents as ministerial duties:

In the case of *MWSS v. COA* and *Uy v. MWSS and COA*, We held that although petitioners were officers of MWSS, they had *nothing to do with policy-making or decision-making for the MWSS, and were*

<sup>40</sup> *Philhealth v. COA*, 839 Phil. 573, 597 (2018), citing *Zamboanga City Water District v. Commission on Audit*, 779 Phil. 225, 247 (2016), further citing *PEZA v. COA*, 690 Phil. 104, 115 (2012) and *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 337 (2015). Italics supplied.

<sup>41</sup> G.R. No. 245400, November 12, 2019, 925 SCRA 403.

*merely involved in its day-to-day operations.* Therein, the petitioners who were department/division managers, Officer-in-Charge – Personnel and Administrative Services and the Chief of Controllorship and Accounting Section were not held personally liable for the disallowed amounts, to quote:

The COA has not proved or shown that the petitioners, among others, were the approving officers contemplated by law to be personally liable to refund the illegal disbursements in the MWSS. While it is true that there was no distinct and specific definition as to who were the particular approving officers as well as the respective extent of their participation in the process of determining their liabilities for the refund of the disallowed amounts, we can conclude from the fiscal operation and administration of the MWSS how the process went when it granted and paid out the benefits to its personnel.

We note that in this case, *petitioners' participation in the disallowed transactions were done while performing their ministerial duties as Head of Human Resources and Administration, and Acting Treasurer, respectively.* Petitioner Alejandrino's main function is the administration of human resources and personnel services, while petitioner Pasetes certified and approved the check voucher and certified the availability of funds as the acting treasurer. It has not been shown that petitioners acted in bad faith as they were merely performing their official duties in approving the payment of the lawyers under the directive of PNCC's executive officers. Petitioners, although officers of PNCC, could not be held personally liable for the disallowed amounts as they were *not involved in policy-making or decision-making* concerning the hiring and engagement of the private lawyers and were *only performing assigned duties which can be considered as ministerial.*<sup>42</sup> (Italics in the original and supplied.)

In the same vein, Mondragon cannot be made liable under the ND when he “recommended approval on the release of the CY 2011 CNA Incentive and approved payment on ‘Box B’ of the Disbursement Vouchers.” This mere act of recommending or requesting for the release of the CNA incentives has nothing to do with the policy or decision of the BFAR for the release thereof.


**WHEREFORE,** the petition is **PARTLY GRANTED.** The Decision No. 2020-160 dated January 28, 2020 of the Commission on Audit is **AFFIRMED WITH MODIFICATION.** The Notice of Disallowance No. 14-05-101(11) dated June 10, 2014 is **UPHELD** to the extent that it disallowed the payment of Collective Negotiation Agreement incentives for failure to comply with the Department of Budget and Management Budget Circular No. 2006-1.

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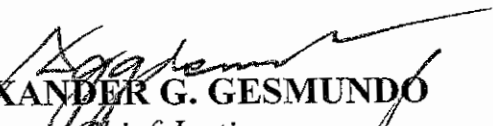
<sup>42</sup> Id. at 426-427.

Accordingly, petitioners Jericardo S. Mondragon, Lina F. Zulueta, and all employees-payees are not liable to return the disallowed amounts. On the other hand, petitioners Atty. Asis G. Perez and Atty. Benjamin F.S. Tabios, Jr., as approving officers, need not refund the disallowed amounts.

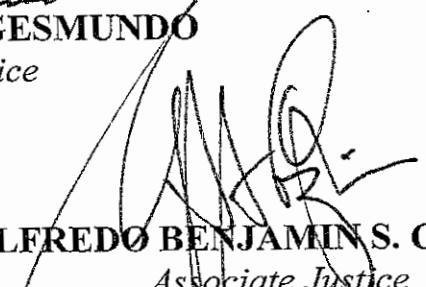
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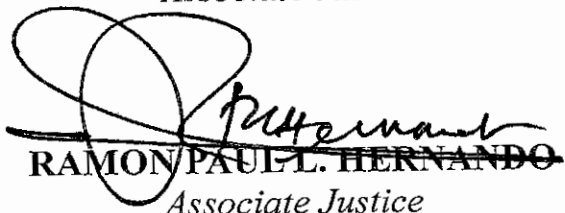
  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

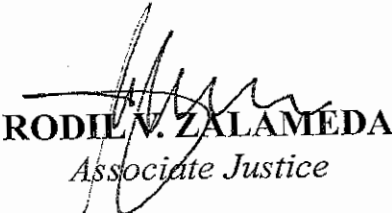
  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

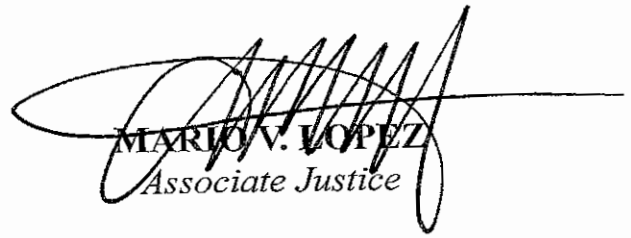
  
**MARVIC M.V.F. LEONEN**  
*Associate Justice*


  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

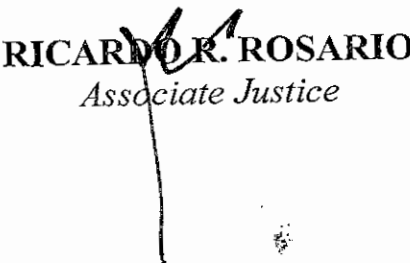
  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*


  
**RODIL V. ZALAMEDA**  
*Associate Justice*

  
**MARIO V. LOPEZ**  
*Associate Justice*

  
**SAMUEL H. GAERLAN**  
*Associate Justice*

  
**RICARDO R. ROSARIO**  
*Associate Justice*

  
**JHOSEPH V. LOPEZ**  
*Associate Justice*

  
**JAPAR B. DIMAAMPAO**  
*Associate Justice*

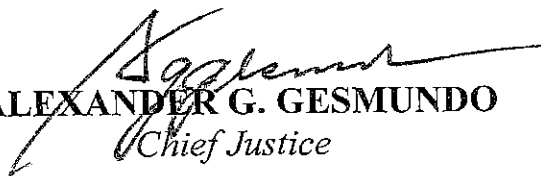
  
**JOSE MIDAS P. MARQUEZ**  
*Associate Justice*

  
**ANTONIO T. KHO, JR.**  
*Associate Justice*

  
**MARIA FILOMENA D. SINGH**  
*Associate Justice*

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

