Republic of the Philippines
Supreme Court
Manila

EN BANC

TEODORO B. CRUZ, JR., MELCHOR M. ALONZO, and WILFREDO P. ALDAY, Petitioners,	**G. R. No. 210936**
	Present:
	SERENO, *CJ*,
	CARPIO,
	VELASCO, JR.,
	LEONARDO-DE CASTRO,
	BRION,
- versus -	PERALTA,
	BERSAMIN,
	DEL CASTILLO, *
	PEREZ,
	MENDOZA,
	REYES,
COMMISSION ON AUDIT, Respondents.	PERLAS-BERNABE,
	LEONEN,
	JARDELEZA, ** and
	CAGUIOA, *JJ.*
	Promulgated:
	June 28, 2016

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D E C I S I O N

SERENO, *CJ:*

This is a Petition for *Certiorari*[1] under Rule 64 of the Rules of Court, assailing Decision No. 2012-142[2] and Notice/Resolution[3] rendered by the Commission on Audit (COA).

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* On Leave.

** No part.

[1] *Rollo*, pp. 3-20.

[2] Id. at 21-26; dated 13 September 2012 and issued by Chairperson Ma. Gracia M. Pulido-Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[3] Id. at 27-28; dated 6 December 2013.

THE ANTECEDENTS FACTS

Petitioners Teodoro B. Cruz, Jr. and Melchor M. Alonzo were former employees of the Light Rail Transit Authority (LRTA): Cruz was the administrator, and Alonzo the Administrative Department manager. Petitioner Wilfredo P. Alday is the current General Services Division Manager.

The facts culled from the records of the case reveal that the LRTA Bids and Awards Committee (BAC) awarded the contract for the repair/rewinding of 23 units of traction motor armature to TAN-CA[4] International Inc./Yujin Machinery, Ltd. as the lowest bidder at US$ 94,800 or PhP 4,876,322.40 (at the conversion rate of US$ 1 = PhP 51.438), despite no formal service repair agreement executed for the purpose.[5]

Units of traction motor armature totaling 23 were sent to South Korea for repair under a Letter of Credit issued by the Land Bank of the Philippines.[6] Out of the 23 units, only 13 were repaired and sent back to Manila in February 2002.[7] Of the 13, three were rejected outright by the LRTA Engineering Division, sent back to Korea, and eventually returned to the LRTA in February 2003.[8] The remaining 10 units were never sent back to the LRTA.[9]

Of the total amount of the Letter of Credit, US$ 58,800 was already paid the Contractor, while the remaining balance of US$ 36,000 was cancelled upon the request of the LRTA Finance Department.[10]

A post-audit was conducted by the Auditor who thereafter issued Audit Observation Memorandum (AOM) No. 2003-001 dated 21 May 2003 with the following findings:

> 1. No service repair agreement and/or contract was executed by and between the LRTA and the Contractor;
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> 2. The payment amounting to US$58,800 was effected on 10 April 2002 without the necessary certification that the traction motor armatures passed the required testing and acceptance requirements by the LRTA Engineering Division. Moreover, the Contractor failed to return the waste materials for the repaired traction motor armatures as provided for in Item No. 2.22 of the Terms of Reference (TOR);

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[4] Also referred to as TANCA in the records.
[5] Id. at 21.
[6] Id.
[7] Id.
[8] Id.
[9] Id.
[10] Id.

3. The recommendation of the LRTA Technical Evaluation Committee to the BAC for the conduct of site visit or ocular inspection of the Contractor's facilities prior to the award and/or during the undertaking of the repair was ignored by the Management; thus putting the LRTA in a disadvantageous position of having no assurance on the capability of the Contractor to undertake the necessary repair works; and,

4. The 10 remaining units of traction motor armature are still with the Contractor TAN-CA International, Inc./Yujin Machinery, Ltd. in Korea, as of AOM date.[11]

On 27 February 2008, the then Director of the COA Legal and Adjudication Office (LAO)-Corporate, issued Notice of Disallowance No. LRTA 2008-005(2002) in the amount of US$ 58,800 as payment to the contractor for the repairs made.[12] Held as persons responsible were the following: Atty. Teodoro B. Cruz, Jr., administrator; Atty. Melchor M. Alonzo, manager, Administrative Department; Mr. Wilfredo P. Alday, manager, General Services Division; Atty. Aurora A. Salvana, manager, Legal Division and BAC chairperson; Ms. Evelyn L. Macalino, chief accountant; and Mr. Edgardo P. Castro, Jr., president of TAN-CA International, Inc.[13] The grounds for the disallowance are enumerated as follows:

1. Lack of supporting documents for the payment, in violation of Section 4(6) of Presidential Decree (P.D.) No. 1445;

2. Failure of LRTA Management to file legal action against the Contractor for not complying with the terms and conditions stipulated in the TOR;

3. Failure of LRTA Management to forfeit the performance bond posted by the Contractor despite the delay in the delivery of the repaired equipment;

4. Failure of the Contractor to complete the repair of all traction motor armatures; and

5. Payment to the Contractor for the cost of repair of 13 units of traction motor armature when only nine units passed the one-year warranty period.[14]

Atty. Teodoro B. Cruz, Jr., Atty. Melchor M. Alonzo, and Mr. Wilfredo P. Alday filed their appeal[15] with COA claiming as follows:

1. The payment made was demanded and justified by the attendant circumstances: first, that the 13 units of traction motor armature were already repaired and delivered to LRTA and thoroughly passed the five-

[11] Id. at 21-22.
[12] Id. at 22.
[13] Id.
[14] Id. at 22-23.
[15] Id. at 29-38.

month testing period; second, the appellants were never aware that the units deliverd must pass the one-year warranty period before payment, as it is unlikely that with such imposition any legitimate contractor/bidder will agree; and third, train operations could be stopped if the payment was not made which could have resulted in greater losses to LRTA;

2. With the successful passing of the nine (9) repaired units of traction motor armature within the one-year warranty period, there can be no question that the same must be paid by LRTA; otherwise, it would unjustly enrich itself at the expense of the appellants. Appellants learned about the failure of the four remaining units to pass the one-year warranty period only from the ND. Moreover, the failure of the four units to pass the one-year warranty period occurred after Appellants Atty. Cruz, Jr. and Atty. Alonzo were separated from the service in December 2003 and August 2003, respectively; and

3. The impugned ND was a result of the re-examination and re-evaluation of the AOM, the issuance of which settled the account. Under Section 52 of P.D. No. 1445, the Commission may *motu propio* review or open settled accounts at any time before the expiration of three (3) years after the settlement and shall in no case be opened or reviewed after said period. Hence, the ND has already prescribed.[16]

THE COA RULING

On the issue of whether there was sufficient ground to warrant the reversal of the Notice of Disallowance, the Commission subsequently issued Decision No. 2012-142,[17] which denied the appeal in this wise:

WHEREFORE, premises considered, this Commission DENIES the herein appeal and AFFIRMS ND No. LRTA 2008-005 (2002) dated February 27, 2008 disallowing the payment of US$58,800.00 to TAN-CA International, Inc./Yujin Machinery Ltd., for repair of traction motor armatures.

The LRTA Management is hereby directed to exert its utmost efforts to demand payment of the liquidated damages as penalty for late delivery in accordance with this Decision and to compel the Contractor to comply with its contractual obligations, or to take appropriate legal action against it to redress the violation of its rights under the TOR. Further, the LRTA Management should demand from the Contractor the return of the 10 traction motor armatures which are still in the hands of the Contractor or the payment of their money value.[18]

In a Resolution[19] dated 6 December 2013 received by petitioners on 5 February 2014, the Motion for Reconsideration[20] was also denied for lack of merit.[21]

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[16] Id. at 23.
[17] Id. at 21-26.
[18] Id. at 25.
[19] Id. at 27-28.
[20] Id. at 39-46.
[21] Id. at 4.

Petitioners filed the instant Petition on 10 February 2014 imputing grave abuse of discretion to COA for: (1) disallowing the payment of US$ 58,800 and holding petitioners liable therefor, even if the release of the payment was demanded and justified by the circumstances, even if the units passed the warranty period, and even if petitioners did not know whether or not the units failed to pass that period; (2) holding the obligation indivisible; (3) surreptitiously examining a settled account; and (4) holding Cruz, the final approving authority, liable even if he claimed to have relied only on his subordinates.[22]

After being granted its Motions for Extension,[23] COA filed its Comment[24] through the Office of the Solicitor General on 26 June 2014. Respondent alleged that it did not commit grave abuse of discretion in disallowing the payment of US$ 58,000 and in holding petitioners liable therefor.[25] It insisted that petitioners had not squarely addressed the issues raised in the Audit Observation Memorandum (AOM) or in the Notice of Disallowance.[26] It also insisted that they were not able to present any proof that the account had been settled.[27] Thus, no weight can be given to petitioners' contention that the three-year prescriptive period was violated by the issuance of the Notice of Disallowance based on an AOM issued on 27 February 2008 or almost five years after the settlement of account on 21 May 2003.[28]

Respondent further argued that petitioners Cruz and Alonzo's claim that they have already resigned is of no moment because (1) the Notice of Suspension was issued on 25 September 2003, and (2) the issues of the AOM and the Notice of Disallowance were already brought to their attention.[29] Respondent claimed that petitioners were notified of the insufficiencies, to wit: lack of supporting documents; failure to file a legal action against the contractor for not complying with the terms and conditions of the contract as stated in the Terms of Reference (TOR); failure to forfeit the performance bond in light of the delay in delivery and incomplete repair of the motors; and payment for 13 units even if only 9 passed the one-year warranty period.[30] In fact, when respondent asked for the submission of the Official Receipt, Report of Waste Materials, duly signed Inspection Report, Certificate of Acceptance, and Certificate of Warranty for the three units rejected by the LRTA Engineering Division, petitioners instead submitted the Advice for Settlement, Inspection Report and Certificate of Appearance, none of which was considered sufficient to warrant the lifting of the Notice

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[22] Id. at 6-9.
[23] Id. at 63-66; 68-71; 73-76.
[24] Id. at 78-93.
[25] Id. at 82.
[26] Id. at 84.
[27] Id. at 85.
[28] Id. at 89.
[29] Id. at 86.
[30] Id. at 86-87.

of Suspension.[31] The transaction, according to respondent, was indeed beset with irregularities. Three failed to pass the test conducted by the LRTA; payment was effected even without the requisite inspection report; the ocular inspection of the contractor's facilities was not conducted prior to the award of the contract; and the contractor failed to perform its obligations according to the TOR, i.e., to return the waste materials.[32]

Petitioners filed their Reply[33] insisting that the amount covered only the 13 motors already repaired and shipped, but not the 10 other motors that had been neither repaired nor returned to the LRTA.[34] They also claimed that they only had limited participation in the transaction, which petitioner Cruz signed as approving officer and petitioners Alonzo and Alday initialed under the administrator's name in the Conforme letter.[35] The request for approval of payment was endorsed and recommended by the Bids and Awards Committee, the General Services Division manager, the Administrative Department manager and the accountant.[36] They all invoked the ruling in *Arias v. Sandiganbayan*[37] and resorted to the defense of good faith, saying they were not aware of the defects in the repair.[38] Meanwhile, they also claimed they sent letters to the contractor upon learning of the default by the latter. When such letters proved futile, they supposedly referred the matter to the legal department for appropriate action. They said that after they left the LRTA, they were no longer privy to how the matter was dealt with.[39]

OUR RULING

We partially grant the Petition.

We find that the payment of US$58,800 was correctly disallowed by COA. The auditor already noted the irregularities in the Audit Observation Memorandum No. 2003-001, but petitioners failed to address the issues. The Notice of Disallowance also noted irregularities that they again neglected to address. Hence, respondent correctly held that petitioners had not provided sufficient basis to warrant the lifting of the Notice of Disallowance.

Petitioners cite circumstances that allegedly justify the release of payment, specifically, the following: (1) the payment was effected through a Letter of Credit; (2) the payment was for the cost of the repair of the 13 units of traction motor armatures; (3) these units were already delivered to the LRTA; and (4) the units underwent repair and even passed the testing period

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[31] Id.
[32] Id. at 87-88.
[33] Id. at 95-107.
[34] Id. at 97.
[35] Id. at 98.
[36] Id.
[37] 269 Phil. 794 (1989).
[38] *Rollo*, p. 99.
[39] Id. at 99-100.

of five months. They likewise claim that the 13 units did not have to pass the one-year warranty period before they could be paid for. They claim that passing the warranty period can never be a precondition for the payment, as no legitimate contractor or bidder will agree to have its products used until the expiration of the warranty period before it gets paid. Finally, petitioners claim that because of the delay in the payment of the repair of the 13 units, the contractor already threatened the LRTA that the former would stop the installation and use of the repaired traction motors. This move would allegedly result in the stoppage of the train operation and, consequently, greater losses to LRTA. Like COA, however, We find these arguments to be without merit, as they are unfounded and unsubstantiated. What is clear is that petitioners were remiss in their duty to take the necessary actions noted in the grounds for disallowance.

Meanwhile, despite the absence of a formal contract, COA resorted to the TOR and bid documents submitted by the contractor to determine whether the obligation was indeed divisible as claimed by petitioners. The latter stipulated that payment to the contractor would be made per contract order or for each of the four (4) traction motor armatures. COA correctly determined, however, that the bid and award pertained to just one work package or one contractual undertaking: the repair of all 23 units of traction motor armature. Hence, it correctly concluded that this undertaking was an indivisible obligation. That petitioners accepted and paid for the delivery of the 13 traction motors only cannot be used by them as an argument to escape liability, since the act in itself constituted an irregularity disallowed by COA.

Petitioners also insist before this Court that COA surreptitiously examined a settled account. They claim that the Notice of Disallowance was issued almost five (5) years after the issuance of the AOM, an interval that was way beyond the prescriptive period of three (3) years under Section 52 of Presidential Decree (P.D.) No. 1445, to wit:

> SECTION 52. Opening and Revision of Settled Accounts. – (1) At any time before the expiration of three years after the settlement of any account by an auditor, the Commission may *motu propio* review and revise the account or settlement and certify a new balance. For that purpose, it may require any account, vouchers, or other papers connected with the matter to be forwarded to it.
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> (2) When any settled account appears to be tainted with fraud, collusion, or error calculation, or when new and material evidence is discovered, the Commission may, within three years after the original settlement, open the account, and after a reasonable time for reply or appearance of the party concerned, may certify thereon a new balance. An auditor may exercise the same power with respect to settled accounts pertaining to the agencies under his audit jurisdiction.
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> (3) Accounts once finally settled shall in no case be opened or reviewed except as herein provided.

However, as correctly pointed out by COA, the issuance of an AOM is just an initiatory step in the investigative audit to determine the propriety of disbursements made. It is the allowance in audit or the issuance of a notice of disallowance that becomes final and executory absent any motion for reconsideration or appeal. In case the notice of disallowance is appealed, it is the decision on appeal that becomes final and executory that would settle the account.

Corales v. Republic[40] is instructive in this regard:

> [T]he **issuance of the AOM is just an initiatory step in the investigative audit** being conducted by Andal as Provincial State Auditor to determine the propriety of the disbursements made by the Municipal Government of Laguna. That the issuance of an AOM can be regarded as just an initiatory step in the investigative audit is evident from COA Memorandum No. 2002-053 dated 26 August 2002. A perusal of COA Memorandum No. 2002-053, particularly Roman Numeral III, Letter A, paragraphs 1 to 5 and 9, reveals that **any finding or observation by the Auditor stated in the AOM is not yet conclusive**, as the comment/justification[25] of the head of office or his duly authorized representative is still necessary before the Auditor can make any conclusion. The Auditor may give due course or find the comment/justification to be without merit but in either case, the Auditor shall clearly state the reason for the conclusion reached and recommendation made. Subsequent thereto, the Auditor shall transmit the AOM, together with the comment or justification of the Auditee and the former's recommendation to the Director, Legal and Adjudication Office (DLAO), for the sector concerned in Metro Manila and/or the Regional Legal and Adjudication Cluster Director (RLACD) in the case of regions. The transmittal shall be coursed through the Cluster Director concerned and the Regional Cluster Director, as the case may be, for their own comment and recommendation. The DLAO for the sector concerned in the Central Office and the RLACD shall make the necessary evaluation of the records transmitted with the AOM. When, on the basis thereof, he finds that the transaction should be suspended or disallowed, he will then issue the corresponding Notice of Suspension (NS), Notice of Disallowance (ND) or Notice of Charge (NC), as the case may be, furnishing a copy thereof to the Cluster Director. Otherwise, the Director may dispatch a team to conduct further investigation work to justify the contemplated action. If after in-depth investigation, the DLAO for each sector in Metro Manila and the RLACD for the regions find that the issuance of the NS, ND, and NC is warranted, he shall issue the same and transmit such NS, ND or NC, as the case may be, to the agency head and other persons found liable therefor.
>
> From the foregoing, it is beyond doubt that the issuance of an AOM is, indeed, an initial step in the conduct of an investigative audit considering that after its issuance there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the Auditee. There is, therefore, no basis for petitioner Corales' claim that his comment thereon would be a mere formality. Further, even though the AOM issued to petitioner Corales already contained a recommendation for the issuance of a Notice of Disallowance, still, it cannot be argued that his comment/reply to the AOM would be a futile act

[40] G.R. No. 186613, 27 August 2013, 703 SCRA 623.

> since no Notice of Disallowance was yet issued. Again, the records are bereft of any evidence showing that Andal has already taken any affirmative action against petitioner Corales after the issuance of the AOM.[41]

Finally, petitioners – specifically petitioner Cruz, who claims to have relied only on his subordinates – bewail the ruling finding them liable as the final approving authority. We find this argument meritorious.

In Notice of Disallowance No. LRTA 2008-005 (2002) dated 27 February 2008, the persons responsible are listed as follows:

Reference		PAYEE	AMOUNT Disallowed	PERSONS RESPONSIBLE
Check No.	CV No./Date			
Letter of Credit	No. DC 202093F	**TANCA INT'L. INC./YUJIN (KOREA)**	US$ 58,800.00 (₱3,025,104.40)	**Atty. T. B. Cruz Jr.** -For being the approving officer and conforme on the drawdown of U.S. $ 58,800.00. **Atty. M. M. Alonzo** **Mr. W.P. Alday** -Initialed under the administrator's name in the Conforme Letter on the drawdown of U.S.$58,800.00. **Atty. A.A. Salvana** -Recommended the award of repair of traction Motors Armatures to TANCA INT'L INC.,/YUJIN (KOREA) WITHOUT EXPECTING A Service Repair Agreement. **Evelyn L. Macalino – Chief Accountant** **TANCA INT'L. INC./YUJIN (KOREA)** -For being the

[41] Id.

				payee to the repair service.

Meanwhile, COA Decision No. 2012-142 dated 13 September 2012 makes no mention of the liability of the persons listed as responsible for the amount disallowed. The Decision merely states as follows:

> The LRTA management should direct its efforts to compel the Contractor to either repair the remaining units still in Korea or return them at the latter's expense as stipulated under Item No. 2.3.1 of the TOR, with penalty in either case, as provided under Item No. 8.1 thereof.[42]

Furthermore, We note that the dispositive portion does not mention the personal liability of the officers:

> The LRTA Management is hereby directed to exert its utmost efforts to demand payment of the liquidated damages as penalty for late delivery in accordance with this Decision and to compel the Contractor to comply with its contractual obligations, or to take appropriate legal action against it to redress the violation of its rights under the TOR. Further, the LRTA Management should demand from the Contractor the return of the 10 traction motor armatures which are still in the hands of the Contractor or the payment of their money value.[43]

More important, We also note the actions of petitioners relative to the disallowance. At the time of payment, they were not aware of the defects in the repair. When they finally became aware of the default of the contractor, they demanded compliance and required the latter to deliver the unrepaired traction motor armatures and corresponding waste materials. These demands were made through (a) a letter dated 27 November 2002 signed by petitioner Cruz, and addressed to Yujin Machineries, Inc. through TAN-CA International, Inc.; (b) a letter dated 3 December 2002 signed by petitioner Alday, and addressed to TAN-CA International, Inc.; and (c) a letter dated 24 April 2003 signed by petitioner Alday, and addressed to Yujin Machineries.[44] And when these letters proved futile, petitioners referred the matter to the LRTA legal department for appropriate action through letter signed by petitioner Alday, and addressed to Atty. Saldana.[45]

In the absence of a showing of bad faith on the part of petitioners Cruz, Alonzo and Alday, therefore, We find them not liable. As correctly invoked by petitioners, We said in *Arias v. Sandiganbayan*:[46]

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[42] Id. at 25.
[43] Id.
[44] Id. at 99.
[45] Id. at 100.
[46] 259 Phil. 794 (1989).

> We would be setting a bad precedent if a head of office plagued by all too common problems-dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing, his signature as the final approving authority.
>
> There appears to be no question from the records that documents used in the negotiated sale were falsified. A key tax declaration had a typewritten number instead of being machine-numbered. The registration stampmark was antedated and the land reclassified as residential instead of ricefield. But were the petitioners guilty of conspiracy in the falsification and the subsequent charge of causing undue in injury and damage to the Government?
>
> We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent 'on their subordinates and on the good faith of those prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of document, letters and supporting paper that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[47]

WHEREFORE, the assailed Commission on Audit Decision No. 2012-142 dated 13 September 2012 and Notice/Resolution dated 6 December 2013 are hereby **AFFIRMED** with the pronouncement that petitioners Cruz, Alday and Alonzo are not personally liable for the disallowed amount.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice

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[47] Id.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

(On Leave)
MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(No part; Comment of OSG was filed during his term as Solicitor General)

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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