



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

EN BANC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT (PSALM) CORPORATION represented by **IRENE J. BESIDO-GARCIA**, in her capacity as President and Chief Executive Officer (CEO), the **OFFICERS and EMPLOYEES of PSALM** listed in the Notice of Disallowance No. 10-003-(2009),

Petitioners,

- versus -

COMMISSION ON AUDIT,

Respondent.

G.R. No. 245830

Present:

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

Promulgated:

December 9, 2020

Done at the Public Office of the Supreme Court

X-----X

DECISION

ZALAMEDA, J.,

Attempts to circumvent a law that requires certain conditions to be met before granting benefits demonstrates malice and gross negligence amounting to bad faith on the part of the government corporation's officers, who are well-aware of such law.

[Signature]

The Case

In this petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court, petitioners seek the reversal of Decision No. 2015-085¹ dated 26 March 2015 of the Commission on Audit (COA), which affirmed the Notice of Disallowance (ND) No. 10-003-(2009) dated 15 June 2010 issued against the grant of Corporate Performance Based Incentive (CPBI) to officials and employees of the Power Sector Assets and Liabilities Management Corporation (PSALM) in the total amount of Php56,604,286.37. Petitioners also ask the Court to review Decision No. 2018-301² dated 15 March 2018, which partially granted petitioners' motion for reconsideration, and excluded some of the approving and certifying officers from solidary liability but held them liable as payees.

Antecedents

On 13 March 2002, pursuant to Republic Act No. (RA) 9136, the Office of the President, through the Department of Budget and Management (DBM), approved a Uniform Compensation Plan (UCP) for three (3) corporations, namely: the National Power Corporation; the National Transmission Commission; and PSALM. Subsequently, on 21 June 2007, these corporations requested the DBM's approval over a proposed Harmonized Power Sector Compensation Plan to increase the salary of their officials and employees pursuant to the UCP.³ The DBM denied their request. However, the DBM recommended that they may, instead, devise an equitable performance-based incentive package in lieu of the salary increase under their proposed harmonized compensation plan.⁴

Starting calendar year (CY) 2008, the respective Board of Directors of the three (3) aforementioned corporations agreed to base their proposed CPBI on a Corporate Action Plan and a Corporate Performance Matrix providing for a framework for assessing their corporate accomplishments.⁵ Pursuant to the said action plan, PSALM's Board of Directors approved Resolution No. 2009-1016-001 dated 16 October 2009⁶ establishing its Corporate Action Plan, Corporate Performance Metrics and Corporate Strategic Plan (CAP/CPM/CSP).

On 15 December 2009, or two (2) months after coming up with PSALM's CAP/CPM/CSP, its Board of Directors approved Resolution No. 2009-1215-006 granting an across-the-board CPBI equivalent to five and a

¹ *Rollo*, pp. 126-129; by Commissioners Heidi L. Mendoza and Jose A. Fabia.

² *Id.* at 149-157; by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia.

³ *Id.* at 150.

⁴ *Id.* at 48.

⁵ *Id.* at 150.

⁶ *Id.* at 51-55.

half (5.1/2) months of basic pay, net of tax, in the total amount of Php56,604,286.37,⁷ to wit:

NOW, THEREFORE, BE IT RESOLVED, AS IT IS HEREBY RESOLVED that, as recommended by PSALM Management and as endorsed by the Board Review Committee (BRC), the Board, in recognition of the corporate accomplishments and the efforts of PSALM officers and employees, hereby approves and confirms the following:

1. The grant of an across-the-board performance-based incentive, equivalent to five and one-half (5.5) months of basic pay net of tax to be released on a staggered basis as follows:

| Proposed Release of Incentive | Equivalent Monthly Basic Pay Net of Tax |
|-------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| By 15 December 2009 | 4 months |
| After validation of an outstanding performance in the 2009 Corporate Performance Assessment Report by the Internal Audit Department | 1.5 months |

2. Authority for the PSALM President and CEO to release the performance-based incentive for 2009 equivalent to five and one-half (5.5) months of basic pay net of tax following the above schedule, and
3. Authority for the PSALM President and CEO to sign and execute any and all documents to effect the foregoing resolution.

APPROVED AND CONFIRMED this 15th day of December 2009.⁸

According to PSALM, it granted the above benefit based on its accomplishments for CY 2009, which have apparently surpassed their targets for the year. Some of these achievements include the privatization of the Limay plant, the turn-over of six (6) additional plants, rates adjustment, attainment of ISO certification, successful execution of an Operation and Maintenance Agreement with NPC, increase in privatization proceeds, and filing of recovery of Stranded Contract Costs and Stranded Debts.⁹

However, the COA Audit Team Leader assigned to PSALM issued the assailed ND No. 10-003(2009)¹⁰ disallowing the above disbursement for being illegal and excessive. The expenditure was found to contravene

⁷ *Id.* at 56-64.

⁸ *Id.* at 63-64.

⁹ *Id.* at 62-63.

¹⁰ *Id.* at 65-72.

Section 64¹¹ of RA 9136¹² otherwise known as the *Electric Power Industry Reform Act of 2001* or the EPIRA Law, which requires prior presidential approval before granting emoluments and benefits to officials and employees of PSALM. The disbursement also violated Section 3(b) and (c)¹³ of Administrative Order No. 103 dated 31 August 2004,¹⁴ mandating the suspension of the grant of new or additional benefits to full-time officials and employees, except for Collective Negotiation Agreement (CNA) Incentives.

With respect to its excessiveness, the grant of CPBI equivalent to five and one-half (5.1/2) months of basic salary was considered unreasonably high and beyond just measure or amount under COA Circular 85-55A¹⁵ dated 08 September 1985.¹⁶

The following persons were determined to be liable for the transaction:

| Name | Position/Designation | Nature of Participation in the Transaction |
|--------------------|----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Jose C. Ibazeta | President and CEO | For certifying that the charges to budget are necessary, lawful and under her (sic) direct supervision and that supporting documents are |
| Dorothy M. Calimag | Manager, Human Resources and General Services Department | |

¹¹ SECTION 64. Fiscal Prudence. — To promote the prudent management of government resources, the creation of new positions and the levels of or increases in salaries and all other emoluments and benefits of TRANSCO and PSALM Corp. personnel shall be subject to the approval of the President of the Philippines. The compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.

¹² Republic Act No. 9136, 08 June 2001.

¹³ SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance

(c) For other non full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans; and (ii) in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (P20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (P20,000.00) per month.

¹⁴ Continued Adoption of Austerity Measures in the Government, Administrative Order No. 103, 31 August 2004.

¹⁵ 3.3 "EXCESSIVE" EXPENDITURES

Definition: The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

¹⁶ *Rollo*, pp. 69-70.

| | | |
|------------------------------|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | valid, proper and legal. |
| Alvin P. Diaz | Manager, Financial Services Department | For certifying that funds are available and earmarked/utilized for the purpose indicated. |
| Maria M. Bautista | Manager, General Accounting Division | For certifying that supporting documents are complete and proper. |
| Jose C. Ibazeta | President and CEO | For approving the payments of the CPBI. |
| Dorothy M. Calimag | Manager, Human Resources and General Services Department | |
| Lourdes S. Alzona | Vice President, Finance | For directing the Development Bank of the Philippines to credit the amount relative to the CPBI to each individual PSALM employees['] and officers['] bank account. |
| Manuel Marcos M. Villalon II | Manager, Treasury Department | |
| Yolanda D. Alfafara | Manager, Controllership Department | |
| Maria M. Bautista | Manager, General Accounting Division | |
| Amelita G. Zarate | Manager, Corporate Fund Management Division | |
| Marivi V. Francisco | Sr. Finance Specialist, GAD | |
| Jose C. Ibazeta | President and CEO | For approving PSALM Memorandum Order No. 09-21 dated 16 December 2009 (Guidelines on the grant of the 2009 CPBI) |
| Board of Directors | PSALM Board of Directors | For signing/approving Board Resolution No. 2009-1215-006 dated 15 December 2009 |
| All Payees | PSALM Officers and Employees | For receiving the 2009 CPBI. ¹⁷ |

On appeal, the COA Corporate Government Sector (CGS) – Cluster B issued Decision No. 2011-015 dated 20 December 2011¹⁸ affirming the disallowance of PSALM's CPBI for CY 2009. It ruled the issuance of the ND without a prior Audit Observation Memorandum (AOM) did not deprive PSALM management of due process. The audit of the 2009 CPBI was a continuation of the audit of the 2008 CPBI in which an AOM, followed by a Notice of Suspension and an ND, was issued. In fact, an ND may be issued by the audit team leader outright.

COA CGS-Cluster B also concurred with the finding that the subject transaction was excessive. An analysis of PSALM's financial statements shows that income from financial operations, after financial expenses,

¹⁷ *Id.* at 70.

¹⁸ *Id.* at 73-78.

reflects a negative of Php3.235 billion. PSALM also had deficient funds to meet its obligations. Finally, the disbursement did not carry the approval of the President as required by law. The confidential document dated 30 December 2009 submitted by PSALM purporting to bear the Office of the President's approval of the grant of CPBI, is insufficient to override the ND. The said document did not bear the signature of President Gloria Macapagal Arroyo and was not among the records available on file or in the possession of the OP. Thus, the authenticity of the document cannot be given weight.¹⁹

Decision of the COA Proper

Petitioners filed a petition for review before the COA Proper, which initially denied the same in its Decision No. 2015-085 dated 26 March 2015²⁰ for failure of petitioners to appeal within the reglementary period of six (6) months or 180 days counted from their receipt of the assailed ND, hence:

WHEREFORE, premises considered, the petition for review of Power Sector Assets and Liabilities Management Corporation is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission on Audit Corporate Government Sector-Cluster B Decision No. 2011-015 dated December 20, 2011, affirming Notice of Disallowance (ND) No. 10-003-(2009) dated June 15, 2010, on the payment of the 2009 corporate performance-based incentive to the officials and employees of PSALM in the total amount of P56,604,286.37, is final and executory.²¹

Upon petitioners' motion for reconsideration, the COA Proper, through its Decision No. 2018-301 dated 15 March 2018,²² affirmed the disallowance, with the modification of excusing certain officers from liability, thus:

WHEREFORE, premises considered, the Motion for Reconsideration of Power Sector Assets and Liabilities Management Corporation (PSALM), its officers and employees, through counsels, of Commission on Audit (COA) Decision No. 2015-085 dated March 26, 2015, is hereby **PARTIALLY GRANTED**. Accordingly, COA CGS-Cluster B Decision No. 2011-015 dated December 20, 2011, and Notice of Disallowance (ND) No. 10-003-(2009) dated June 15, 2010, on the grant of Corporate Performance-Based Incentive to PSALM officials and employees for calendar year 2009, in the total amount of P56,604,286.37 is **AFFIRMED with MODIFICATION**. All PSALM officials and employees named liable under the ND shall remain liable, except for Mr. Alvin P. Diaz, Ms. Lourdes S. Alzona, Mr. Manuel Marcos M. Villalon II, Ms. Yolanda D. Alfara, Ms. Amelita G. Zarate, Ms. Marivi V. Francisco,

¹⁹ *Id.* at 75-78.

²⁰ *Id.* at 126-129.

²¹ *Id.* at 128

²² *Id.* at 149-158.



and Ms. Maria M. Bautista who are excluded from liability as approving/certifying officers but shall continue to be liable as payees up to the amount they actually received.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.²³

The COA Proper explained that the issuance of an AOM is not a prerequisite for the issuance of an ND. Petitioners were afforded the opportunity to defend themselves in their appeals disproving the denial of due process. Moreover, the disallowance was justified for lack of Presidential approval and for being excessive considering PSALM had a negative actual income for CY 2009.

The officers and employees of PSALM likewise could not claim good faith since at the time the CPBI for CY 2009 was granted, the audit team had already issued an AOM and an ND disallowing the same kind of benefit, more specifically the CPBI for CY 2008. The COA Proper, nevertheless, excused from liability some of the approving and certifying officers, who merely performed ministerial functions when they signed the pertinent documents for the subject disbursement. Nonetheless, these officers were still held liable as payees up to the amount they received.²⁴

Issues

Petitioners now come before this Court and raise the following as grounds to question the COA's decision:

- A. The constitutional right of petitioners to due process of law was violated when the ND No. 10003-(2009) was hastily issued by the Audit Team Leader without giving them prior information of the alleged questionable transaction (grant of 2009 CPBI) and without affording them the opportunity to explain the transaction subject of disallowance.
- B. The grant of 2009 CPBI to petitioners is not excessive on the ground that the 2009 CPBI is an equitable performance-based incentive package that was formulated, validated and approved by the PSALM BOD in its Resolution No. 2009-1215-006 dated December 15, 2009 and justified by the totality of the achievements of PSALM.
- C. CPBI is a reward or financial incentive and not a benefit, hence it is not covered by the requirements of approval by the Office of the President under Section 64 of RA 9136 and the grant of 2009 CBPI

²³ *Id.* at 157.

²⁴ *Id.* at 153-156.



cannot be considered as “unnecessary expense” within the meaning and contemplation of COA Circular No. 85-55-A.

- D. PSALM officials who authorized its disbursements upon the authority of the PSALM Board and the officials and employees who received the incentive in good faith in the honest belief that the same were due them under the law as approved by the President of the Philippines, confident that they deserve such incentive are entitled to the presumption of good faith.²⁵

Respondent, through the Office of the Solicitor General, argues the petition for *certiorari* should be dismissed because it was filed without the requisite imprimatur of its statutory counsel, the Office of the Government Corporate Counsel (OGCC). Petitioners also failed to comply with procedural requirements on attachments and timeliness when it filed its appeal before the COA. They were afforded due process in this case since an AOM is not a pre-requisite to the issuance of an ND. Even more important, the grant of the CPBI to PSALM personnel was not approved by the President and is clearly excessive. Lastly, petitioners’ defense of good faith is unavailing given their patent disregard of the law.²⁶

Ruling of the Court

The petition lacks merit. Initially, We will discuss the procedural issues raised by both parties.

The OGCC gave its approval for the filing of the present case

The OGCC was designated as the principal law office for Government Owned and Controlled Corporations (GOCCs) under Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987,²⁷ which states:

SECTION 10. *Office of the Government Corporate Counsel.* — The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

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²⁵ *Id.* at 10-11.

²⁶ *Id.* at 200-220.

²⁷ Executive Order No. 292, 25 July 1987.



Accordingly, Section 1, Rule 5 of the OGCC Rules and Regulations²⁸ states that the OGCC shall handle all cases involving GOCCs unless their respective legal departments are duly authorized or deputized, or when the engagement of a private lawyer has been authorized in accordance with the rules.

The present petition involving PSALM, a GOCC created pursuant to Section 49²⁹ of the EPIRA Law, should be prosecuted and supervised by the OGCC. At the very least, the OGCC should have duly authorized or deputized the legal department of PSALM to handle the same.

In *Land Bank of the Phils. v. Spouses Amagan*,³⁰ the Court ruled the entry of appearance by the OGCC and its subsequent filing of pleadings, while submitting Letters of Authority earlier issued to authorize Land Bank's lawyers to handle the case, unequivocally demonstrated the OGCC's control and supervision over the actions of Land Bank's Legal Services Group, and its approval of the actions already undertaken by the latter.

Similarly, in this case, the OGCC entered its appearance,³¹ submitted an authority letter dated 18 June 2019³² in favor of PSALM's in-house lawyers authorizing them to appear as counsel, and filed a Reply³³ on behalf of PSALM. With this premise, the Court equally rules that the current suit is being litigated by the OGCC, PSALM's principal counsel. Respondent's argument that the present petition should be dismissed for lack of authorization from the OGCC is without merit.

The issue on the timeliness of petitioner's appeal before the COA has already been rendered moot

Respondent also questions petitioners' failure to comply with procedural requirements on attachments and timeliness before the COA. It argues that petitioners' patent disregard of procedural rules was clear when

²⁸ Rules Governing the Exercise by the OGCC of its Authority, Duties and Powers as Principal Law Office of All GOCCs OGCC Rules and Regulations (2012).

²⁹ SECTION 49. Creation of Power Sector Assets and Liabilities Management Corporation. — There is hereby created a government-owned and -controlled corporation to be known as the "Power Sector Assets and Liabilities Management Corporation", hereinafter referred to as the "PSALM Corp.", which shall take ownership of all existing NPC generation assets, liabilities, IPP contracts, real estate and all other disposable assets. All outstanding obligations of the NPC arising from loans, issuances of bonds, securities and other instruments of indebtedness shall be transferred to and assumed by the PSALM Corp. within one hundred eighty (180) days from the approval of this Act.

³⁰ G.R. No. 209794, 27 June 2016 [Per J. Caguioa].

³¹ *Rollo*, pp. 250-260.

³² *Id.* at 238-240.

³³ *Id.* at 227-236.

they filed their petition for review against COA-CGS Cluster B Decision No. 2011-015 five days (5) after the lapse of the reglementary period. Respondent also insists that petitioners failed to submit relevant and material documents³⁴ for their appeal.

In *Lumayna v. Commission on Audit*,³⁵ the Court declared the issue of whether therein petitioners timely filed their motion for reconsideration moot and academic after the COA gave due course to the said motion without stating it was filed out of time. Similarly, in *Rotoras v. Commission on Audit*,³⁶ the COA resolved therein petitioners' motion for reconsideration notwithstanding the procedural infirmity of belated filing. Hence, the Court ruled that the issue on the belated filing has already been rendered moot.

In this case, the COA, despite initially dismissing petitioners' appeal on technical grounds, reconsidered its earlier decision and gave due course to their motion for reconsideration thereby deciding petitioners' appeal on the merits. The Court, therefore, rules that the technical issues raised by respondent has already been rendered moot.

The non-issuance of an Audit Observation Memorandum did not violate petitioners' right to due process

We agree that the supposed failure to issue an AOM to petitioners is not sufficient to invalidate the assailed ND based on due process considerations. Indeed, under Section 4, Rule IV of the 2009 Revised Rules of Procedure of the Commission on Audit (2009 Revised COA Rules),³⁷ an AOM is not among those that are required to be issued in the course of audit. Thus:

Section 4. Audit Disallowances/Charges/Suspensions – In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, **the auditor shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions.** Such ND/NC shall be adequately established by evidence and the conclusions, recommendations or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles. **The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation.** (Emphasis supplied)

³⁴ COA Audit Observation Memorandum re: Corporate Performance-Based Incentive (CPBI) for 2008, Appeal Memorandum dated 10 December 2010, COA CGS-Cluster B Decision No. 2001-015 dated 20 December 2011, Salary/Pay Plan of PSALM, National Power Corporation (NPC) and National Transmission Corporation (TRANSCO), 2009 PSALM Corporation Action Plan (CAP) July 2009, 2009-2018 Corporate Strategic Plan (CSP) July 2009, and 2009 PSALM Corporate Performance Metrics (CPM) July 2009.

³⁵ G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per J. Del Castillo].

³⁶ G.R. No. 211999, 20 August 2019 [Per J. Leonen].

³⁷ Approved on 15 September 2009; Effective on 28 October 2009.

Meanwhile, in Section 5.3, Chapter II of the 2009 Rules and Regulations on the Settlement of Accounts,³⁸ the issuance of an AOM is not automatic, and is only availed of when an audit decision cannot be reached due to incomplete documents or where the deficiencies found during audit do not involve pecuniary loss, to wit:

5.3. The audit and examination of transactions pertaining to an account shall be done in accordance with laws, rules, regulations and standards to determine whether these transactions may be allowed, suspended, disallowed or charged in audit. **In case an audit decision cannot as yet be reached due to incomplete documentation/information, or if the deficiencies noted refer to financial or operational matters which do not involve pecuniary loss, an Audit Observation Memorandum (AOM) shall be issued.** (Emphasis supplied)

All told, petitioners were not deprived of their right to due process. In the administrative sense, due process simply means the opportunity to be heard or to explain one's side, or to seek a reconsideration of the action or ruling being impugned.³⁹ Petitioners were afforded this opportunity when they appealed to the COA CGS-Cluster B and later on, to the COA Proper. In fact, the COA Proper went above what is required when, as mentioned, it gave due course to petitioners' petition for review despite its belated filing.

With procedural matters finally resolved, We now turn our attention to the substantive arguments raised by petitioners.

The grant of the CPBI equivalent to five and a half months of basic pay net of tax to PSALM's employees was correctly disallowed in audit

Petitioners are adamant that there is no need to obtain the approval of the President for the grant of CPBI since it was a "financial reward or incentive," and not a "benefit" covered under Section 64 of RA 9136.

Petitioners argument is untenable.

RA 9136, which created PSALM, specifically provided guidelines in the grant of all emoluments and benefits to the corporation's personnel, thus:

SECTION 64. Fiscal Prudence. — To promote the prudent management of government resources, the creation of new positions and the levels of or increases in salaries and **all other emoluments and**

³⁸ Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, 15 September 2009; Effective on 06 October 2009.

³⁹ *Mateo v. Romulo*, G.R. No. 177875, 08 August 2016 [Per J. Bersamin].

benefits of TRANSCO and PSALM Corp. personnel shall be **subject to the approval of the President of the Philippines**. The compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.⁴⁰ (Emphasis supplied)

Rule 32(a) of the Implementing Rules and Regulations of RA 9136 similarly provides:

RULE 32

Fiscal Prudence

(a) Pursuant to Section 64 of the Act, the creation of new positions and the levels of or increases in salaries and **all other emoluments and benefits** of TRANSCO and PSALM personnel shall be **subject to the approval of the President of the Philippines**.⁴¹ (Emphasis supplied)

Clearly, the term “all other emoluments and benefits” is intended to cover every kind of financial grant and payment given to PSALM employees and is thereby covered by the rule requiring Presidential approval. When the law does not distinguish, neither should the Court.⁴²

Petitioners’ resort to semantics in attempting to distinguish incentive from “all other emoluments and benefits” is made even more specious by the DBM’s advice to PSALM recommending an equitable performance-based incentive **in lieu of upgrading the pay and benefits** of PSALM personnel through a harmonized compensation plan, to wit:

x x x We believe that allowances and other fringe benefits to employees should not be an across-the-board entitlement but should be based on individual as well as corporate performance. This is the reason why we proposed an amendment to Special Provision No. 1 of the NPC budget for FY 2008 as submitted to Congress (copy attached for reference). More strategically, we think that **any upgrading of pay and benefits** at this stage will be a strong disincentive to the privatization effort currently under way.

In lieu of the proposed harmonized compensation plan, therefore we suggest that an equitable performance based incentive package covering allowances, bonus or similar incentives be considered consistent with the above mentioned Special Provision proposed to Congress. (Emphasis supplied)

Evidently, the CPBI was devised as an alternative to implementing an across-the-board increase in allowances and other benefits. Operating on such premise, PSALM cannot claim the CPBI is an incentive not requiring Presidential approval pursuant to RA 9136 whereas the original allowances

⁴⁰ Electric Power Industry Reform Act of 2001, Republic Act No. 9136, 08 June 2001.

⁴¹ Implementing Rules and Regulations of Republic Act No. 9136, 27 February 2002.

⁴² *Philippine National Bank v. Palma*, G.R. No. 157279, 09 August 2005 [Per J. Panganiban].



and benefits proposed to be implemented would be covered by the same law.

Moreover, PSALM should have taken special note of Sections 3(b) and (c) of Administrative Order No. 103 dated 31 August 2004,⁴³ viz:

SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance;

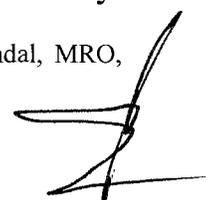
(c) For other non full-time officials and employees, including members of their governing boards, committees, and commissions: (i) **suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans;** and (ii) in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (P20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (P20,000.00) per month. (Emphasis supplied)

This issuance should, thus, have cautioned petitioners from granting CPBI, or at least, prompted them to initially seek the approval of the President before the release of the grant. The document that petitioners claim to be a certified true copy of the President's "confidential" approval cannot be given credence because it lacks the signature of the President. It was also established that "the said confidential documents are not among the records available on file or in the possession of the Malacañang Records Office."⁴⁴ It also bears stressing that the supposed approval was only procured on 30 December 2009, which was after the PSALM Board of Directors had already approved the grant of CPBI for CY 2009.

At any rate, the grant of CPBI to PSALM employees was truly excessive and extravagant warranting disallowance. Excessive expenditures have been recognized as "unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount. They also include expenses in excess of reasonable limits." Meanwhile, extravagant expenditures are described as "those incurred without restraint, judiciousness and economy.

⁴³ *Supra* at note 13.

⁴⁴ *Rollo*, p. 77; confirmation letter dated 17 September 2010 by Dr. Marianito M. Dimaandal, MRO, Office of the President.



Extravagant expenditures exceed the bound of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious.”⁴⁵

Even if PSALM claims to have exceeded its targets and achieved outstanding performance, **the rate of five and a half (5 1/2) months basic pay net of tax had no basis at all.** Petitioners should have been guided by the rates of incentives in previous issuances such as Executive Order No. 486 dated 08 November 1991, entitled *Establishing a Performance-Based Incentive System for Government-Owned or Controlled Corporations and For Other Purposes*. This was enacted to establish “an incentive system for GOCCs, which shall be directly linked to their level of performance and which shall encourage and recognize the outstanding performance and accomplishments with varying incentives.”⁴⁶

Executive No. 486 was later amended by Executive Order No. 518 dated 29 May 1992⁴⁷ setting forth the maximum rate for GOCC incentives and the source from which these incentives are to be funded, thus:

b. Corporate Incentive Awards. — Depending on the degree of performance, GOCCs shall be authorized to allocate an amount equivalent to a percentage of the total annual budget for Personnel Expenses as Cash Incentive Fund. The percentages authorized for each GOCC shall be as follows:

| GOCC Performance Grade | Maximum Cash Incentive Fund |
|------------------------|-----------------------------|
| A (Outstanding) | 20 percent |
| B (Very Satisfactory) | 15 percent |
| C (Satisfactory) | 10 percent |
| D (Fair) | None |
| E (Poor) | None |

The above incentive fund shall be the source for rewards, either in kind or in cash bonuses, to be granted by GOCCs only to deserving officers and employees based on an evaluation of their individual performance and relative contribution to the attainment of the corporation's goals and targets. **The maximum allowable amount of incentive bonus for a GOCC officer or employee shall vary according to the performance grade of the GOCC and of his department or division or unit, and to his individual performance but shall in no case exceed three (3) months' basic salary or its equivalent.**⁴⁸ (Emphasis supplied)

It is crystal clear from these issuances that the permissible maximum rate for incentives is three (3) months basic salary or its equivalent. No other

⁴⁵ *Miralles v. Commission on Audit*, G.R. No. 210571, 19 September 2017, 818 Phil. 380 [Per J. Bersamin].

⁴⁶ *Establishing a Performance-Based Incentive System for GOCCs*, Executive Order No. 486, 08 November 1991.

⁴⁷ Amendments to E.O. No. 486 (s. 1991) Re: Establishment of Performance-Based Incentive System for GOCCs, Executive Order No. 518, 29 May 1992.

⁴⁸ Subsection (b), Section 4 of Executive Order No. 486 dated 08 November 1991, as amended.

law or issuance allows PSALM to grant more than this. Consequently, the CPBI given by PSALM to its employees was indeed excessive and extravagant as it exceeded reasonable limits.

Respondent, therefore, did not act with grave abuse of discretion in disallowing the CPBI equivalent to five and a half (5 1/2) months basic salary net of tax, or a total disbursement of Php56,604,286.37.

The payees are required to return the amounts they received pursuant to the principle of solutio indebiti

In determining the civil liability to return disallowed amounts of the persons held liable in the ND, the Court is now guided by the recent case of *Madera v. Commission on Audit*,⁴⁹ wherein a definite set of rules was established in consideration of previous divergent Court rulings, to wit:

In view of the foregoing discussion, the Court pronounces:

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

The Court made the above pronouncement after thoughtful study and

⁴⁹ G.R. No. 244128, 08 September 2020 [Per J. Caguioa].



application of Sections 38⁵⁰ and 39,⁵¹ in relation to Section 43,⁵² of the Administrative Code⁵³ whereby government officials who approved and certified the grant of disallowed benefits are held solidarily liable to return the amount thereof only when they acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties.

Meanwhile, the Court applied the principle of *solutio indebiti* and unjust enrichment in considering the liability of passive recipients regardless of their good faith in the receipt of the disallowed amounts.⁵⁴ These concepts are based on Article 2154⁵⁵ of the Civil Code, which provides that if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises.

The extent of the passive recipients' liability to return is further reinforced by COA Circular No. 2009-006 dated 15 September 2009,⁵⁶ which provides the liability of all persons identified in NDs:

SECTION 16. Determination of Persons Responsible/Liable. —

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

X X X X

⁵⁰ 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.

xxx

(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.

⁵¹ 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.

⁵² 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.

⁵³ Executive Order No. 292, 25 July 1987.

⁵⁴ *Madera v. Commission on Audit*, G.R. No. 244128, 08 September 2020 [Per J. Caguioa].

⁵⁵ Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

⁵⁶ Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, 15 September 2009.

16.1.5 The **payee of an expenditure shall be personally liable** for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.2 **The liability for audit charges shall be measured by the individual participation and involvement of public officers** whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

16.3 **The liability of persons determined to be liable under an ND/NC shall be solidary** and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable. (Emphasis supplied)

The above rule served as validation of the precept that passive recipients, such as herein payees, shall only be liable to the extent of the amount they unduly received, in contrast to officers who are guilty of bad faith, malice or gross negligence in the disbursement of the disallowed amounts shall be solidarily liable therein.⁵⁷

There are, however, exceptions to the general application of *solutio indebiti* when applied to passive recipients, namely: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; (3) where social justice or humanitarian considerations are attendant; and (4) other *bona fide* exceptions as may be determined on a case to case basis.⁵⁸ Nonetheless, the facts in the case at bar present no opportunity for the application of any of the above exceptions to the principle of *solutio indebiti*.

First, the grant of CPBI to PSALM employees cannot be considered as genuinely given in consideration of services rendered. Senior Associate Justice Perlas-Bernabe, in her Concurring Opinion to *Madera*, expounded on meaning of this exception, *viz*:

Nevertheless, the foregoing general rule mandating passive recipients to return should not apply where the disallowed compensation was **genuinely intended as payment for services rendered**. As examples, 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 standardized salaries. To be sure, Republic Act No. 6758, otherwise known as the "Compensation and Position Classification Act of 1989," "standardize[s] salary rates among government personnel and do[es] away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Section 12 thereof lays down the general rule that all allowances of State workers are to be included in their standardized salary rates, with the exception of the

⁵⁷ *Supra* at note 47.

⁵⁸ *Id.*



following allowances:

1. Representation and transportation allowances (RATA);
2. Clothing and laundry allowances;
3. Subsistence allowances of marine officers and crew on board government vessels;
4. Subsistence allowance of hospital personnel;
5. Hazard pay;
6. Allowance of foreign service personnel stationed abroad; and
7. **Such other additional compensation not otherwise specified herein as may be determined by the DBM.**

The said allowances are the "only allowances which government employees can continue to receive in addition to their standardized salary rates." Conversely, "all allowances not covered by the [above] exceptions x x x are presumed to have been integrated into the basic standardized pay" and hence, subject to disallowance.⁵⁹

In determining whether a certain benefit was given to compensate actual services rendered, the foremost consideration should be the legality of the expenditure. This presupposes that there is a law authorizing its grant and all the legal conditions for the disbursement were met. However, for reasons not affecting the genuineness of the payout, such as lack of reportorial requirements or minor missteps in the procedure, the transaction had to be disallowed as a result of some form of irregularity. Here, We have already determined there was no law, legal issuance, or presidential approval authorizing the CPBI disbursement. Since this disbursement is illegal and unlawful, it cannot be an exception for the return of the amounts received.

Second, there is no allegation or proof that the payees will suffer irreparable harm equivalent to any form of undue prejudice for the return of the disallowed amounts. Conversely, it was the government that actually suffered undue prejudice through inappropriate use of government funds.

Third, the exorbitant rate given by PSALM as CPBI precludes the Court from applying social justice or equity considerations in exonerating the payees from liability. A perusal of the records shows that **only 257 officials and employees of PSALM benefited from the Php56,604,286.37 disbursed. Worse, some of the payees received as much as Php472,680.00 for CPBI alone.** The inequity this Court must remedy should unquestionably be in favor of the government and not the payees who

⁵⁹ *Madera v. Commission on Audit*, Separate Concurring Opinion per SAJ Perlas-Bernabe, pp. 11-12.

received extortionate amounts.

For these reasons, the Court must apply the general rule and hold the payees personally liable for the amounts of CPBI they received. This is only fitting in light of the above circumstances precluding the application of any of the exceptions for return.

The remaining approving and certifying officers are solidarily liable for the disallowed amounts

To recall, the following approving and certifying officers remain liable after the COA cleared other officers, who merely performed ministerial duties in the disbursement of the disallowed amounts, from liability:

| Name | Position/Designation | Nature of Participation in the Transaction |
|---------------------------------------|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Jose C. Ibazeta Dorothy M. Calimag | President and CEO Manager, Human Resources and General Services Department | For certifying that the charges to budget are necessary, lawful and under her direct supervision and that supporting documents are valid, proper and legal. |
| Jose C. Ibazeta Dorothy M. Calimag | President and CEO Manager, Human Resources and General Services Department | For approving the payments of the CPBI. |
| Jose C. Ibazeta | President and CEO | For approving PSALM Memorandum Order No. 09-21 dated 16 December 2009 (Guidelines on the grant of the 2009 CPBI) |
| Board of Directors | PSALM Board of Directors | For signing/approving Board Resolution No. 2009-1215-006 dated 15 December 2009 |

After applying our current standards, the Court finds basis to hold the above officers solidarily liable for the disallowed amount.

Generally, “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.”⁶⁰ However,

⁶⁰ *Supra* at note 47.

when there is considerable proof of evident bad faith, malice or gross negligence, the solidary liability of the officers arises, thus:

Under prevailing jurisprudence, **mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence.** Rather, there must be some **dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will.** It partakes of the nature of **fraud** and contemplates a state of mind affirmatively operating with **furtive design or some motive of self-interest or ill will for ulterior purposes.** x x x⁶¹

The following badges of whether an authorizing or certifying officer exercised the diligence of a good father of a family are also instructive:⁶²

x x x For one to be absolved of liability the following requisites [may be considered]: (1) a certificate of availability of funds, pursuant to Section 40 of the Administrative Code; (2) an in-house or a Department of Justice legal opinion; (3) lack of jurisprudence disallowing a similar case; (4) the issuance of the benefit is traditionally practiced within the agency and no prior disallowance has been issued; and (5) on the question of law, that there is a reasonable textual interpretation on the expenditure or benefit's legality.⁶³

Verily, the Court sees no reason for PSALMS's failure to obtain presidential approval for the grant of CPBI to its employees. The law is clear, straightforward, and leaves no other room for interpretation. Indeed, this requirement exists in PSALM's own enabling law, which the approving and certifying officers are presumed to know.

PSALM's patent failure to observe the law is made more apparent by its initial attempt to secure the approval of the President, through the DBM, for the implementation of a Harmonized Power Sector Compensation Plan. The DBM, in its Letter 24 January 2008,⁶⁴ suggested for PSALM to come up with an equitable performance-based incentive in lieu of the proposed harmonized plan. Coupled with PSALM, earlier attempt to secure Presidential approval for the harmonized compensation plan, PSALM had no reason to forego said approval for the grant of CPBI intended to substitute such compensation plan. PSALM's failure in this wise, despite being well aware of the legal requirement necessitating Presidential approval, can only be interpreted as an attempt to bypass such prerequisite.

The Court likewise notes the improbable manner by which PSALM

⁶¹ *Madera v. Commission on Audit*, G.R. No. 244128, 08 September 2020 [Per J. Caguioa], citing *Lumayna v. Commission on Audit*, G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per J. Del Castillo].

⁶² *Supra* at note 47.

⁶³ *Madera v. Commission on Audit*, Separate Concurring Opinion per J. Leonen, p. 8.

⁶⁴ *Rollo*, p. 48.

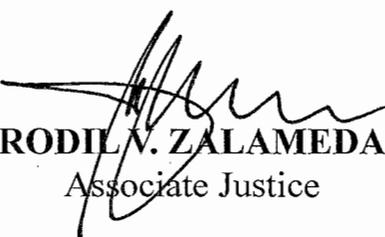
formulated its performance metrics and accomplishment rating thereby generating the grant of CPBI equivalent to five and one-half (5.5) months of basic salary net of tax. The performance metrics and corporate targets were approved only in the last quarter of 2009, specifically on 16 October 2009, while Board Resolution No. 2009-1215-006 recognizing PSALM's accomplishments and approving the grant of CPBI resulting from said feats was issued immediately on 15 December 2009. Board Resolution No. 2009-1215-006 even concluded that "as of November 2009, PSALM has in fact accomplished its set target for the year."⁶⁵ The period of two (2) months from the date they set their targets until the date when they granted the benefit gives an impression that the targets set were made to conform to what was already accomplished by PSALM.

From the foregoing, it becomes increasingly clear that the highly irregular process was employed to circumvent the stringent requirements of the law, and give the grant of the exorbitant benefit the appearance of legitimacy. Further militating against petitioners' good faith is that the CPBI was given as an across-the-board incentive instead of it being based on individual and corporate performance. This contradicts the intent of the DBM in suggesting a performance-based incentive in lieu of across-the-board benefits.

Intrinsically, the actions of the remaining approving and certifying officers can only be equated with malice and gross negligence amounting to bad faith. On those grounds, they remain solidarily liable for the disallowed amounts.

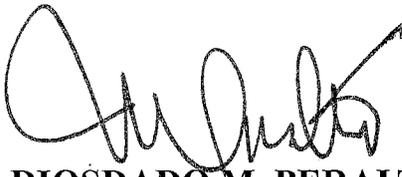
WHEREFORE, the petition is **DENIED**. Decision No. 2018-301 dated 15 March 2018 promulgated by the Commission on Audit is hereby **AFFIRMED** with clarification that the approving and certifying officers are solidarily liable for the disallowed amounts while the payees are liable only for the amounts they personally received.

SO ORDERED.

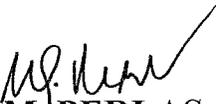

RODIL N. ZALAMEDA
Associate Justice

⁶⁵ *Id.* at 62.

WE CONCUR:



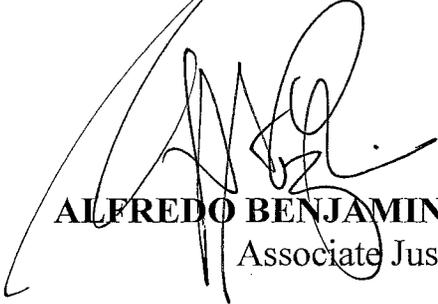
DIOSDADO M. PERALTA
Chief Justice



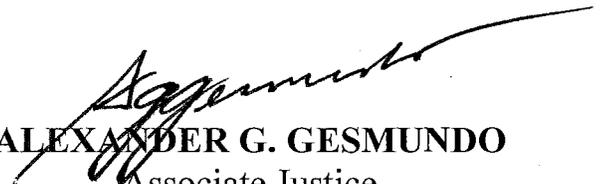
ESTELA M. PERLAS-BERNABE
Associate Justice



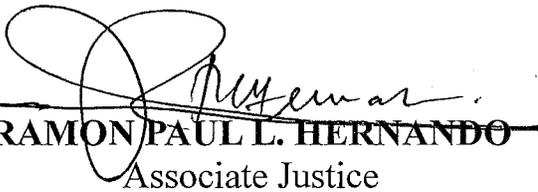
MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



ROSMAR D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



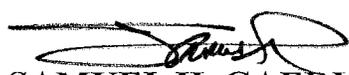
HENRI JEAN PAUL B. INTING
Associate Justice



MARIO N. LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



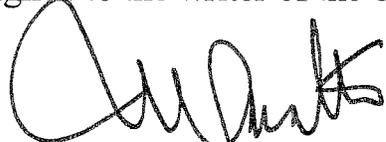
SAMUEL H. GAERLAN
Associate Justice



RICARDO M. ROSARIO
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.



DIOSDADO M. PERALTA
Chief Justice