

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

EN BANC

**NATIONAL HOUSING
 AUTHORITY (NHA), represented
 herein by its General Manager,
 MARCELINO P. ESCALADA,
 JR., FROILAN R. KAMPITAN,
 ELVIRA A. SABADO, WILMA D.
 HERNANDEZ, FE P.
 VALENZUELA, PRUDENCIA B.
 GUGOL, RAYMOND N. ABAD,
 JEANETTE I. BACCAY,
 DANILO GONZALES,
 ALEJANDRO A. NUEVAS,
 EVELYN BALAIS, AVELINA
 LLEVA, MA. MELANI
 ABASOLA, and ALL RANK-
 AND-FILE EMPLOYEES OF
 NHA, represented herein by
 EVANGELINE A. JAVIER,
 President of the Consolidated
 Union of Employees of NHA (CUE)
*Petitioners,***

G.R. No. 239936

Present:

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

- versus -

**THE COMMISSION ON AUDIT,
 REPRESENTED BY MICHAEL
 G. AGUINALDO, in his capacity as
 the Chairperson; MARY S.
 ADELINO, in her capacity as
 Director, Cluster II-Corporate
 Government Sector of the
 Commission on Audit; JANET B.
 REYES, in her capacity as Audit
 Team Leader; and REBECCA A.
 DUMAGUIT, in her capacity as
 Supervising Auditor,
*Respondents.***

Promulgated:

X-----X

June 21, 2022

[Signature]

**NATIONAL HOUSING
AUTHORITY,**

G.R. No. 252584

Petitioner,

- versus -

COMMISSION ON AUDIT,

Respondent.

X ----- X

DECISION

ROSARIO, J.:

Before Us are consolidated Petitions for: (1) *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court and Rule XII of the 2009 Revised Rules of Procedure of the Commission on Audit (COA), assailing Decision No. 2018-124² dated January 26, 2018 by the Commission on Audit Commission Proper in COA CP Case No. 2015-013; and (2) Injunction³ with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction, seeking to nullify and set aside the Notice of Finality of Decision⁴ issued by the COA on March 4, 2020.

The Antecedents of the Case

The facts of the case, as found by the COA Commission Proper, are as follows:

The National Housing Authority (NHA), represented by Atty. Sinforoso R. Pagunsan (Atty. Pagunsan), Acting General Manager, and Mr. Araceli B. Natino, Vice President of the Consolidated Union of Employees of the NHA, filed a Petition for Review⁵ before the Commission Proper, assailing the COA Corporate Government Sector (CGS)-Cluster 2 Decision No. 2015-013⁶ dated August 13, 2015, which affirmed the following Notices of Disallowance (NDs),⁷ pertaining to the payment of allowances, bonuses, and other emoluments to the officers and employees of the NHA for calendar years (CYs) 2008 to 2009, to wit:

¹ *Rollo* (G.R. No. 239936), pp. 232-274.

² *Id.* at 275-288. Signed by Chairperson Michael C. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito.

³ *Rollo*, (G.R. No. 252584), pp. 3-19.

⁴ *Id.* at 140-142.

⁵ *Rollo* (G.R. No. 239936), pp. 86-100. Filed pursuant to Section 2, Rule VII of the 2009 Revised Rules of Procedure of the Commission on Audit.

⁶ *Id.* at 289-301.

⁷ *Id.* at 302-523.

ND No.	Date	Nature of Disallowance	Amount in Pesos (₱)
2008-2009-01	February 1, 2012	Payment of Cash Incentive Award	173,832,792.50 ⁸
2008-2009-02		Payment of Economic Subsidy	54,954,000.00 ⁹
2008-2009-03		Payment of Christmas Bonus	71,453,000.00 ¹⁰
2008-2009-04		Payment of Citation Bonus	14,530,000.00 ¹¹
2008-2009-05		Payment of Mid-Year Financial Assistance (MYFA)	33,708,957.86 ¹²
2008-2009-06	January 5, 2012	Payment of meal subsidy, children's allowance, and rice subsidy	18,295,504.00 ¹³
2008-2009-07		Payment of Representation and Transportation Allowance (RATA)	1,070,500.00 ¹⁴
Total			₱367,844,754.36¹⁵

The liable parties named below appealed the NDs and filed four (4) separate Appeal Memoranda before the CGS Cluster Director (CD) on different dates, to wit:¹⁶

Appellant	Date of Receipt of the NDs	Date of Filing of the Appeal
Members of the Board of Directors (BOD) from CYs 2008 to 2009: Mr. Chito M. Cruz, Mr. Federico A. Laxa, Ms. Elvira A. Sabado, Ms. Wilma D. Hernandez, Ms. Fe P. Valenzuela, Ms. Rosemarie C. Sioting, and Mr. Renato V. Iballa	October 22, 2012	April 16, 2013

⁸ Id. at 343.

⁹ Id. at 377.

¹⁰ Id. at 378.

¹¹ Id. at 445.

¹² Id. at 478.

¹³ Id. at 514.

¹⁴ Id. at 523.

¹⁵ Id. at 234.

¹⁶ Id. at 276.

Atty. Rodolfo C. Sabio	December 3, 2012	April 19, 2013
Lolita Adea, et al.	Various dates in December 2012	April 22, 2013
Attys. Sergio D. Domasian, Rony A. Lagmay, and Parina R. Jabinal	December 4 and 5, 2012; and January 7, 2013, respectively	June 4, 2013
Atty. Grant Z. Tepace	October 23, 2012	May 31, 2013

The CGS CD consolidated and decided the appeals in COA CGS-Cluster 2 Decision No. 2015-013,¹⁷ denying them and affirming the NDs. The NHA received a copy of the Decision on August 26, 2015. On behalf of all the liable parties, the NHA, represented by Atty. Pagunsan, filed a petition for review on September 1, 2015 with the Commission Secretariat of the COA, with payment of the corresponding filing fees and within the reglementary period.¹⁸

Records show that Director Divinia M. Alagon of then COA CGS-Cluster B issued Office Order No. 2010-043 dated September 3, 2010, creating a Special Audit Team to audit the salaries and allowances, bonuses, and representation and transportation allowance (RATA) paid to the officers, employees, and members of the NHA Board of Directors (BOD) for calendar years (CYs) 2008 to 2009.¹⁹

Considering that the grant of the incentives, bonuses, and allowances violated Section 12 of Republic Act (R.A.) No. 6758,²⁰ Section 3 of Memorandum Order (MO) No. 20²¹ dated June 25, 2001, and Sections 45 of R.A. Nos. 9498²² and 9524,²³ the Audit Team Leader (ATL) and the Audit Team Supervisor (ATS) issued the subject NDs, questioning the legal basis or authority of the disbursements. The following persons were named liable therein:²⁴

¹⁷ Id. at 289-301.

¹⁸ Id. at 276-277.

¹⁹ Id. at 277.

²⁰ AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES. Approved: August 28, 1989.

²¹ Directing heads of government-owned-and-controlled corporations (GOCCs), government financial institutions (GFIs) and subsidiaries exempted from or not following the Salary Standardization Law (SSL) to implement pay rationalization in all senior officer positions. Signed: June 25, 2001.

²² AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND EIGHT, AND FOR OTHER PURPOSES. Approved: January 28, 2008.

²³ AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND NINE, AND FOR OTHER PURPOSES. Approved: March 12, 2009.

²⁴ *Rollo*, pp. 277-278.

Persons Liable	ND Nos.	Nature of Participation
Mr. Federico A. Laxa, Former General Manager	2008-2009-01 to 2008- 2009-07	For approving the grant of Cash Incentive Bonus (CIB) or State of the Nation (SONA) Incentive Award, economic subsidy, Christmas Bonus, Citation Bonus, MYFA, meal subsidy, children's allowance, rice subsidy, and RATA for CYs 2008 and 2009
Ms. Wilma D. Hernandez, Manager, Financial Management Department	2008-2009-01 to 2008- 2009-05	For certifying the availability of funds for CIB or SONA Incentive Award, economic subsidy, Christmas Bonus, Citation Bonus, MYFA, meal subsidy, children's allowance, rice subsidy, and RATA
Ms. Elvira A. Sabado, Manager, Human Resource and Management Department	2008-2009-01 to 2008- 2009-07	For recommending the approval of CIB or SONA Incentive Award, economic subsidy, Christmas Bonus, Citation Bonus and MYFA
Ms. Fe P. Valenzuela, Manager, Treasury Department	2008-2009-01 to 2008- 2009-07	For disbursing the CIB or SONA Incentive Award, economic subsidy, Christmas Bonus, Citation Bonus, MYFA, meal subsidy, children's allowance, rice subsidy, and RATA through debit advice to depository bank
Ms. Rosemarie C. Sioting, Manager, Accounting Department	2008-2009-01 to 2008- 2009-07	For certifying that expenditures are proper, disbursement vouchers are supported by documents and account codes in Journal Entry Vouchers for CIB or SONA Incentive Award, economic subsidy, Christmas Bonus, Citation Bonus, MYFA, meal subsidy, children's allowance, rice subsidy, and RATA
Mr. Renato V. Iballa, Manager, General Service Department	2008-2009-03	For certifying that the expenses (CIB and economic subsidy) are necessary, lawful, and incurred under his direct supervision
NHA BOD	2008-2009-01 to 2008- 2009-06	For approving the grant of CIB or SONA Incentive Award, economic subsidy, Christmas Bonus, Citation Bonus, MYFA, meal subsidy, children's

		allowance, and rice subsidy for CYs 2008 and 2009 and for receiving the same
Atty. Rodolfo C. Sabio, Representative, Office of the Government Corporate Counsel	2008-2009-02	For receiving CIB or SONA Incentive Award and Christmas Bonus for CYs 2008 and 2009
NHA Officers, employees and emergency hires	2008-2009-01 to 2008- 2009-04; and 2008- 2009-06 to 2008-2009- 07	For receiving the CIB or SONA Incentive Award, economic subsidy, Christmas Bonus, Citation Bonus, meal subsidy, children's allowance, rice subsidy, and RATA for CYs 2008 and 2009

Aggrieved by the NDs, the above-named liable persons appealed before the Director, CGS-Cluster 2 of the COA, raising the following issues:

- 1) Letter of Implementation (LOI) No. 97²⁵ dated August 31, 1979 authorized the adoption of additional incentives for government-owned or controlled corporations (GOCCs) performing critical functions; thus, the approving NHA officers were merely performing important functions;
- 2) Section 10²⁶ of Presidential Decree (PD) No. 757²⁷ authorizes the General Manager, subject to the approval by the BOD, to determine the rates of allowances, honoraria, and such other additional compensation which the NHA is authorized to grant to its officers, technical staff and consultants, including the necessary detailed personnel;
- 3) The grant of CIB or SONA Incentive Award is in accordance with Section 35,²⁸ Chapter 5, Subtitle A, Title I of Book V of Executive

²⁵ Authorizing the Implementation of Standard Compensation and Position Classification Plans for the Infrastructure/Utilities Group of Government Owned or Controlled Corporations.

²⁶ Section 10. *Organizational Structure of the Authority.* The Board shall determine the organizational structure of the Authority in such manner as would best carry out its powers and functions and attain the objectives of this Decree.

The General Manager shall, subject to the approval of the Board, determine and appoint the subordinate officers, other personnel, and consultants, if necessary, of the Authority: Provided, That the regular, professional and technical personnel of the Authority shall be exempt from the rules and regulations of the Wage and Position Classification Office and from the examination and/or eligibility requirement of the Civil Service Commission. Subject to the approval of the Board, the General Manager shall likewise determine the rates of allowances, honoraria and such other additional compensation which the authority is hereby authorized to grant to its officers, technical staff and consultants, including the necessary detailed personnel.

²⁷ CREATING THE NATIONAL HOUSING AUTHORITY AND DISSOLVING THE EXISTING HOUSING AGENCIES, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES." Approved: July 31, 1975.

²⁸ Section 35. *Employee Suggestions and Incentive Award System.* - There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission. In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their

- Order (EO) No. 292²⁹ and its Implementing Rules in recognition of the NHA's valuable contributions in the implementation of the national government flagship housing program and in the overall economic program of the national leadership;
- 4) The economic subsidy was given to help the employees cope with the financial difficulties on the unabated increase in the price of basic commodities and mitigating inflation;
 - 5) The Christmas Bonus is the NHA's way of expressing recognition of the employees' selfless devotion of duty and dedication to public service and is in keeping with the spirit of gift-giving;
 - 6) The Citation Bonus is anchored on pertinent provisions of EO No. 292 as implemented through the Civil Service Commission (CSC) Memorandum Circular No. 1³⁰ (s. 2001);
 - 7) The payment of MYFA to the employees is an annual tradition and a recognized corporate practice since 1988 or prior to the approval of R.A. No. 6758 that have already ripened into benefits. Thus, the principle of non-diminution of benefits and salaries applies. On December 18, 1995, the President approved the granting of the MYFA;
 - 8) The grant of meal subsidy and Christmas Bonus were anchored on LOI No. 97, while the rice subsidy was granted pursuant to Board Resolution No. 1725³¹ dated June 6, 1989. The subsequent increases in the rates of meal and rice subsidy were pursuant to the approval of the Office of the President communicated through letters dated October 2, 1991 and April 5, 1993;
 - 9) The grant of RATA to select employees who were occupying positions outside those authorized to receive the same pursuant to the General Appropriations Act (GAA) was discontinued as early as July 1, 2011;
 - 10) The approving NHA officers cannot be held liable since the approval of these benefits and their subsequent release and receipt were all in accordance with duly concluded Collective Negotiation Agreement (CNA) which, like any other contracts, has the force and effect of law between the parties;
 - 11) The grant of benefits should be deemed to have been made with constructive notice and tacit approval of the Office of the President because the NHA's Corporate Operating Budget (COB) is approved by the BOD, where the President's alter egos, namely the Secretaries of Public Works and Highways, Transportation and Communication, Finance, Labor and Employment, Trade and Industry, Director General

suggestions, inventions, superior accomplishment, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

²⁹ Also known as the "ADMINISTRATIVE CODE OF 1987." Approved: July 25, 1987.

³⁰ Program on Awards and Incentives for Service Excellence (PRAISE). Dated: January 26, 2001.

³¹ *Rollo*, pp. 557-558.

of the National Economic Development Authority, and the Executive Secretary sit; and

- 12) Appellants cannot be made to refund what they have received because they acted in good faith. They received the allowances and bonuses in the honest belief that they were deserving and that the grant thereof had legal basis.³²

In their Answer dated September 10, 2013, the ATL and the Supervising Auditor argued that the appellants cannot find solace under Section 9³³ of PD No. 757 and LOI No. 97, because these authorities were already repealed by PD No. 985,³⁴ PD No. 1597,³⁵ and R.A. No. 6758. They averred that appellants cannot claim good faith because their Notarized Deed of Undertaking made them aware of the irregularity and illegality of the allowances and benefits they have received. Thus, they are bound to refund the salaries and benefits they received.³⁶

The CGS CD denied the appeals and affirmed the NDs in COA-CGS Cluster 2 Decision No. 2015-013³⁷ because the clear policy of R.A. No. 6758, as ruled in the case of *Maritime Industry Authority v. COA*,³⁸ is to standardize rates among government personnel and do away with multi-level allowances and other incentive packages and the resulting differences in compensation among them. Thus, the general rule that all allowances are deemed integrated into the standardized salary negates the legality of the disallowed allowances and benefits. The CGS CD also ruled that the petitioners failed to adduce evidence and cite any rule or regulation promulgated by the CSC on the grant of CIB or SONA Incentive Award as mandated by Section 35, Chapter 5, Subtitle A, Title I, Book V of EO No. 292. They likewise failed to show any approval from the CSC on the grant of the Citation Bonus.³⁹

³² Id. at 278-279.

³³ Section 9. *Duties of the General Manager*. The General Manager, as Chief Executive Chief Officer of the Authority, shall have the following duties and responsibilities:

- (a) To direct and supervise the operations and internal affairs of the Authority. The General Manager may delegate certain of his administrative responsibilities to other officers of the Authority, subject to the rules and regulations promulgated by the Board;
- (b) To prepare the agenda for the meetings of the Board such policies and measures as he may believe necessary to carry out the purposes of this Decree;
- (c) To execute, administer and implement the policies and measures approved by the Board;
- (d) Subject to the approval of the Board, to fix the number and salaries of and appoint, the subordinate officers and personnel of the Authority and to remove, or otherwise discipline, for cause, any such officer or employee;
- (e) To represent the Authority in all dealings with other officers, agencies, and instrumentalities of the Government and with all persons and entities, public or private, domestic or foreign;
- (f) To act, in the conduct of the business of the Authority, on all matters that are not by this Decree specifically reserved to the Board; and;
- (g) To exercise such other powers and perform such other duties as may be vested in him by the Board.

³⁴ A DECREE REVISING THE POSITION CLASSIFICATION AND COMPENSATION SYSTEMS IN THE NATIONAL GOVERNMENT, AND INTEGRATING THE SAME. Approved: August 22, 1976.

³⁵ FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT. Approved: June 11, 1978.

³⁶ Id. at 280.

³⁷ Id. at 289-301.

³⁸ 750 Phil. 288, 314-315 (2015).

³⁹ *Rollo*, pp. 295-297.

As to the grant of the MYFA authorized by the President in a letter dated December 18, 1995, the CGS CD ruled that the grant does not extend to succeeding increases without prior approval from the President.⁴⁰ The NHA failed to obtain such approval, and thus, the increase contravenes Section 3(b)⁴¹ of Administrative Order (AO) No. 103 (s. 2004).⁴² Moreover, the NHA violated the GAA for CYs 2008 and 2009 when it granted RATA to employees who were not entitled to receive the benefit. The said allowances and benefits are non-negotiable, hence, cannot be the subject of the CNA.⁴³

Furthermore, the application of the alter ego doctrine is improper, ratiocinating that the Cabinet Secretaries, the Director General of the NEDA, and the Executive Secretary were all acting in their capacity as members of the BOD, and not as willed by the President.⁴⁴

The Decision of the Commission Proper

The Commission Proper denied the petition for review for lack of merit. It affirmed Special Audit ND Nos. 2008-2009-01, 2008-2009-02, 2008-2009-03, 2008-2009-04, 2008-2009-05, all dated February 1, 2012; and ND Nos. 2008-2009-06 and 2008-2009-07, both dated January 5, 2012, pertaining to the allowances, bonuses, and other emoluments granted to the officers and employees of the NHA for CYs 2008 to 2009, in the total amount of ₱367,844,754.36.⁴⁵

The Petitioners' Arguments

While the petitioners maintain that the grant of allowances was legal, they likewise claim that the same was made in good faith in order not to be held liable for the disallowed amounts. They raise the following arguments:

- 1) The subject NDs are seriously flawed, contrary to, and bereft of, any legal bases, thus rendering the assailed COA Decision No. 2018-124 dated January 26, 2018 and CGS Cluster 2 Decision No. 2015-013 dated August 13, 2015 not only invalid and unsubstantiated but also arbitrary and whimsical;⁴⁶ and

⁴⁰ Id. at 297.

⁴¹ Sec. 3. All NGSs, 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 (CAN) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-management Council Resolution No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuances; x x x.

⁴² DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT. Approved: August 31, 2004.

⁴³ *Rollo*, p. 297.

⁴⁴ Id. at 298.

⁴⁵ Id. at 59.

⁴⁶ Id. at 237-238.

- 2) Honest belief and good faith, and the absence of any indicia of bad faith on the part of the officers and employees of the NHA, vis-à-vis judicial adherence to well-established doctrinal rulings, militate and dictate that they cannot be faulted for any of the flawed decisions of the COA nor be made to return that which the latter is ordering them to do. The COA Commission Proper gravely erred or abused its discretion when it rendered the assailed Decision affirming the NDs.⁴⁷

The Issue

The sole issue for consideration in this case is whether the COA Commission Proper acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, when it rendered the assailed Decision dated January 26, 2018, affirming the disallowance of the benefits under the subject NDs.

The Court's Ruling

We rule in the negative and, consequently, dismiss the consolidated petitions for lack of merit.

At the outset, We clarify that the NDs being challenged in the original Petition for *Certiorari* filed by the petitioners on June 28, 2018, namely ND Nos. 2014-001, 2014-002, 2014-003 (2013) and 2014-005 (2014) were not the NDs affirmed in COA Decision No. 2018-124, but those pertaining to the grant of the Program Administration Fees (PAF) to NHA officers and employees for CYs 2013 and 2014 in the total amount of ₱58,612,450.00, which were subject of Cluster CGS-Cluster 2 Decision No. 2015-009 dated June 2, 2015. The NDs pertaining to the PAF are subject of a petition for review, docketed as COA CP Case No. 2015-380, which remains pending resolution by the COA Commission Proper.⁴⁸

In its Motion with Leave of Court to Amend Petition and Admit Attached Amended Petition,⁴⁹ the NHA admitted that due to sheer human frailty, the NDs that were assailed in the Petition for *Certiorari* and attached to the same were incorrect. The NHA prayed that We set aside technicalities and resolve the Petition based on the merits thereof. In a Resolution dated July 2, 2019,⁵⁰ the Supreme Court *En Banc* granted the petitioners' motion for leave of court to amend the Petition. Thus, on May 7, 2019, the petitioners

⁴⁷ Id. at 246.

⁴⁸ *Rollo* (G.R. No. 239936), pp. 138-157. See the Comment dated September 11, 2018 of the Office of the Solicitor General (OSG), acting as counsel for the COA. The OSG presented a Certification from the COA stating that the Petition for Review filed by the NHA assailing the CGS Cluster 2 Decision No. 2015-009 dated June 2, 2015, which affirmed the NDs on the PAF, was still under review by the Commission Proper.

⁴⁹ Id. at 175-182.

⁵⁰ Id. at 562-563.

submitted their Amended Petition for *Certiorari*,⁵¹ containing the arguments discussed above.

The COA did not commit grave abuse of discretion in affirming the disallowances subject of the NDs.

We find that in affirming the disallowance under the subject NDs, the respondent COA did not act without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.⁵² The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.⁵³

As correctly pointed out by the OSG, the petitioners failed to overcome the burden of proving that respondent COA committed grave abuse of discretion. The decision of the COA affirming the disallowances is consistent with the prevailing laws and jurisprudence.

In denying the petition, the COA correctly ruled that the power of the NHA BOD under Sections 8⁵⁴ and 9⁵⁵ of PD No. 757 to fix and grant additional compensation to the officials and employees of the NHA had already been repealed by Section 16 of R.A. No. 6758, which provides that:

SEC. 16. *Repeal of Special Salary Laws and Regulations.* — All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or

⁵¹ Id. at 232-27.

⁵² *Hi-Lon Manufacturing, Inc. v. COA*, 815 Phil. 60, 89 (2017).

⁵³ *Metropolitan Waterworks and Sewerage System v. COA*, 821 Phil. 117, 138 (2017).

⁵⁴ Section 8. *Powers and Duties of the Board.* The Board shall have the following powers and duties:

- (a) Formulate, prescribe, and promulgate the implementing rules and regulations required by this Decree;
- (b) Act upon the annual budget and such supplemental budgets of the Authority submitted by the General Manager: Provided, That the Board may reduce but may not increase any item proposed by the General Manager;
- (c) Approve the organizational structure of the Authority as well as its staffing pattern, the salaries of the personnel and their powers and duties submitted by the General Manager;
- (d) Enter into such contract or agreement as may be necessary for the attainment of the purposes and objectives of this Decree;
- (e) Render annual reports to the President and such special reports as may be requested; and
- (f) Exercise all the powers necessary or incidental to the attainment of the purposes of this Decree.

⁵⁵ *Supra* note 33.

allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed. (Emphasis supplied)

Upon the effectivity of R.A. No. 6758, GOCCs were included in the Compensation and Position Classification System prescribed thereunder. Provisions of law which exempt government entities from the Compensation and Position Classification System, or otherwise fix salaries, pay rates, or allowances inconsistent with R.A. No. 6758 have been repealed or modified pursuant to Sections 16 and 22.⁵⁶ The same must be said of Sections 8 and 9 of the NHA Charter.⁵⁷

It should also be stressed that the authority to determine allowances or benefits which are deemed integrated in the standardized salary rates, and hence, can be continuously given to employees of government agencies, rests with the Department of Budget and Management (DBM). Pursuant to this authority, the DBM, in its Corporate Compensation Circular (CCC) No. 10-99,⁵⁸ or the Implementing Rules and Regulations of R.A. No. 6758, specified those allowances/fringe benefits that are not to be integrated into the basic salary and allowed to be continued but only to incumbents as of June 30, 1989.

The benefits and allowances subject of the assailed NDs, with the exception of the RATA, were not excluded from the integration into the standardized salary rates under R.A. No. 6758. Meanwhile, as to the continued grant of meal and rice subsidy and children's allowances under CCC No. 10-99, the same requires that the recipient employee must be an incumbent as of June 30, 1989 and was actually receiving said allowances on or prior to the said date. In effect, incumbent employees as of June 30, 1989 are the only qualified recipients. Moreover, the payment by the NHA of the benefits and allowances to its employees is tantamount to illegal disbursement of public funds and was correctly disallowed.

With regard to the grant of RATA, the RATA belongs to a group of allowances to defray expenses deemed avoidable in the discharge of office. RATA is paid only to certain individuals who, by the nature of their offices, incur representation and transportation expenses. Officials entitled to RATA are enumerated in Section 45 of R.A. Nos. 9498 and 9524 or the GAAs for CYs 2008 and 2009, respectively. Section 45 further states that the determination in other national government agencies, GOCCs and local government units of those that are of equivalent rank shall be made by the DBM. Hence, RATA is granted only to officers or employees whose positions are enumerated under Section 45 or are declared by the DBM as equivalent ranks of the enumerated positions. Thus, the RATA granted to NHA

⁵⁶ SEC. 22. *Repealing Clause.* – all laws, decrees, orders, rules or regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

⁵⁷ See also *Philippine International Trading Corporation v. COA*, 368 Phil. 478 (1999), and *Philippine Charity Sweepstakes Office v. Pulido-Tan*, 785 Phil. 266, 277 (2016).

⁵⁸ Rules and Regulations for the Implementation of the Revised Compensation and Classification System Prescribed under [R.A.] No. 6758 for Government Owned and/or Controlled Corporations (GOCCs) and Financial Institutions (GFIs). Issued: February 15, 1999.

employees whose positions are not within the purview of Section 45 is disallowable.

As regards the argument that the payment of the benefits was in accordance with the CNA, the NHA cannot argue that the grant of the aforesaid benefits and allowances were in accordance with the CNA. DBM Budget Circular No. 2006-1 dated February 1, 2006⁵⁹ states that:

5.4.1 All existing cash incentives in the CNAs in the form of allowances and benefits, such as staple food allowance, rice subsidy, grocery allowance, inflation allowance, relocation allowance, SONA bonus, bonuses other than the year-end bonus benefit under RA No. 6686, as amended by RA No. 8441, etc., shall be consolidated into a single cash incentive, and shall be referred to and collectively paid as the CNA Incentive.

x x x x

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 the year.

x x x x

7.0 Funding Source

7.1 The CNA Incentives shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, still valid for obligation during the year of payment of the CNA x x x.

x x x x

7.3 GOCCs/GFIs and LGUs may pay the CNA Incentive from savings in their respective approved corporate operating budget or local budgets.

Based on the above provisions, all the incentives arising from the CNA shall be referred to and collectively paid as a cash incentive. The cash incentive shall be paid as a one-time benefit after the end of the year because the lone source of funds to pay off the incentives is taken from the savings from the released maintenance and other operating expenses (MOOE). The grant of cash incentives should depend on the existence of savings, and not on the fact of agreement in the CNA between the NHA Management and the Consolidated Union of Employees-NHA. Furthermore, the NHA divided the CNA Incentives into several allowances and granted the benefits in varying dates without proof that the same were sourced from the savings from the released MOOE of the NHA.

Furthermore, Section 10, Resolution No. 02, s. 2003, provides that the following are not negotiable:

- a. Increase in salary emoluments and other allowances not presently provided for by law;

⁵⁹ SUBJECT: Grant of Collective Negotiation Agreement (CNA) Incentive.

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x x x x

f. Rice/sugar/other subsidies.

Likewise, Section 3, Rule XII of Public Sector Labor Management Council Resolution No. 02 dated September 28, 2004, provides that benefits specifically provided by law are non-negotiable, to wit:

Compensation matters. – Increases in salary, allowances, travel expenses and other benefits that are specifically provided by law are not negotiable.

With respect to the petitioners' invocation of the doctrine of qualified political agency, We agree with the respondent COA that the same does not apply in this case.

The alter ego principle, which petitioners invoke, states that the acts of the secretaries of such departments performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.⁶⁰ However, the principle cannot be extended to acts of the appointees of the President in the Cabinet sitting as members of the NHA BOD. As enunciated in *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*,⁶¹ the doctrine cannot be invoked when members of the Cabinet are sitting and acting as responsible members of the BOD (i.e., *ex officio* or by reason of their office or function) constituted pursuant to a law. Thus, the alter ego principle cannot be invoked by the members of the Cabinet sitting as the NHA BOD.

The grant of MYFA and Christmas Bonus partakes of the nature of a year-end benefit (YEB) that is regulated under MO No. 324 (s.1990).⁶² Section 3 of the MO prohibits employees from receiving YEB in excess of one-month basic salary and ₱1,000.00 Cash Gift. DBM Budget Circular No. 2005-06 dated October 28, 2005 further prohibits the grant of other benefits which partake the nature of YEBs unless authorized by the President.

It is true that the grant of the MYFA was approved by the President in a letter dated December 18, 1995. However, there is nothing in the letter that authorized the NHA BOD to either grant the MYFA for the succeeding years or increase the amount of assistance. The principle of non-diminution of benefits cannot justify the grant of the MYFA since the compensation of the NHA employees is governed by laws and regulations which sanction unauthorized or irregular compensation or benefits no matter how long it has been regularly granted.

⁶⁰ *Department of Environment and Natural Resources v. Department of Environment and Natural Resources Region XII Employees*, 456 Phil. 635, 644 (2003).

⁶¹ 705 Phil. 331, 348-349 (2013).

⁶² Providing Guidelines for the Grant of Year-end Benefits to Officials and Employees of Government Owned and/or Controlled Corporations including Government Financial Institutions.

Section 35, Chapter 5, Subtitle A, Title I of Book V of EO No. 292, establishes the government-wide employee suggestions and incentive award system to recognize an employee's contribution to efficiency, economy, or other improvement of government operations, or performance of such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment. The implementation of this award system must be in accordance with rules, regulations and standards promulgated by the CSC. In this case, the NHA failed to prove that the grant of the CIB or SONA Incentive Award and Citation Bonus was based on rules and regulations and standards approved by the CSC. Moreover, Section 35 does not authorize the grant of across-the-board benefits to all employees. Notably, in the 2008 and 2009 COB of the NHA, the DBM disallowed the payment of the CIB or SONA Incentive due to lack of legal basis.

*There was no good faith in the
release and receipt of the
disallowed amounts*

The petitioners contend that even if the disallowance of the benefits is upheld, its officials and employees should not be held liable to refund the benefits they received as the same were released and received by them in good faith.

Prevailing jurisprudence explains that good faith cannot be appreciated in the following instances: 1) if the subject benefits/allowances were granted and paid while there was already a preceding Supreme Court decision concerning disallowance of the same nature, or otherwise interprets the laws or rules that apply in the case at hand and settles any ambiguity thereon, even if such decision involves another government agency;⁶³ or 2) when the approving officers had knowledge of facts or circumstances which would render the disbursements illegal.⁶⁴

It cannot be said that the members of the NHA BOD acted in the honest belief that the benefits and allowances given were due to the recipients. R.A. No. 6758 and PD No. 1597 (Further Rationalizing the System of Compensation and Position Classification in the National Government) are explicit that the NHA BOD is bereft of power to grant and increase the amount of the allowances. The rules and regulations, as discussed above, are very emphatic on the needed approval of the President to grant and increase allowances and benefits. In fact, some of the bonuses and allowances appropriated in the NHA's COB for CYs 2008 to 2009 were already disallowed by the DBM, yet the NHA still continuously granted the benefits.

The members of the NHA BOD, majority of whom are composed of Cabinet Secretaries, are expected to know and implement the law, rules, and

⁶³ *Zamboanga City Water District v. COA*, 779 Phil. 225, 250 (2016).

⁶⁴ *Social Security System v. COA*, 794 Phil. 387, 410 (2016).

regulations pertaining to salaries and compensation of government employees. Thus, solidary liability for the total disallowance falls upon the members of the NHA BOD who authorized/certified/approved the payment of the disallowed benefits. Section 103 of PD No. 1445⁶⁵ provides:

SECTION 103. General Liability for Unlawful Expenditures. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Similarly, the recipient-employees, by virtue of the notarized Deeds of Undertaking,⁶⁶ are likewise liable to refund the benefits and allowances they actually received when they authorized the NHA, through the Treasury Department, to deduct from their salaries or benefits due them the equivalent amount received, payable in equal monthly installments, should refund be necessary and required. No evidence on record shows that the employees were forced, intimidated, and threatened to execute the said undertakings, which are considered valid contracts.

We also note that, pursuant to the enactment of R.A. No. 10149, otherwise known as the “GOCC Governance Act of 2011,” the Governance Commission on GOCCs (GCG) has acquired jurisdiction over GOCCs including the NHA. Under Section 5(h)⁶⁷ of the law, in relation to Section 10⁶⁸ thereof, the GCG is expressly mandated to recommend additional compensation, allowances and incentives for employees of the GOCC sector to the President for his approval. In this case, it appears that no recommendation from the GCG or approval from the President has been secured.

Prevailing Rule on the Refund of Amounts Disallowed by the COA

In the recent case of *Madera v. COA (Madera)*,⁶⁹ the Supreme Court *En Banc* had the opportunity to provide a clear set of rules regarding the refund of amounts disallowed by the COA in order to reach a just and equitable outcome among persons liable for disallowances. The rules promulgated therein are as follows:

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:

⁶⁵ Ordaining and Instituting a Government Auditing Code of the Philippines (1978).

⁶⁶ *Rollo* (G.R. No. 239936), p. 52.

⁶⁷ (h) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;

⁶⁸ Section 10. Additional Incentives. - The GCG may recommend to the President, incentives for certain position titles in consideration of the good performance of the GOCC; Provided, That no incentives shall be granted unless the GOCC has fully paid all taxes for which it is liable, and the GOCC has declared and paid all the dividends required to be paid under its charter or any other laws.

⁶⁹ G.R. No. 244128, September 8, 2020.

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- 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.⁷⁰

The Court further noted in *Madera* that the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the Court as regards the return of disallowed amounts—after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made. To reiterate, the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will be done by the Court on a case-to-case basis.

As applied to the instant case, the Court agrees with the COA and maintains that there was no good faith in the release and receipt of the disallowed amounts.

The 3-year prescriptive period established in the case of Cagayan de Oro City Water District v. COA is not applicable in this case

The Court *En Banc* through Justice Samuel H. Gaerlan in *Cagayan de Oro City Water District vs. COA (Cagayan de Oro)*,⁷¹ laid down the guidelines on the application of Rule 2d in *Madera*. This rule governs cases when the Court may excuse recipients from returning the amounts they received on the grounds of undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis.

⁷⁰ Id.

⁷¹ G.R. No. 213789, April 27, 2021.

Significantly, a 3-year prescriptive period was established in the *Cagayan de Oro* case after which passive recipients would no longer be required to refund. The Court pertinently held:

In sum, this Court pronounces the following considerations in determining whether or not a refund can be excused under Rule 2d of Madera:

X X X X

2. The Court shall consider the lapse of time between the receipt of the allowances and benefits, and the issuance of the notice of disallowance or any similar notice indicating its possible illegality or irregularity. Absent any circumstances the Court may deem sufficient, the lapse of three (3) years without any such notice shall be sufficient to excuse recipients from making a refund. However, this three (3) year period rule shall not apply in favor of persons found to have actively participated in fraudulent transactions, i.e., those found culpable in Special Audits or Fraud Audits conducted by the COA.⁷²

Senior Associate Justice Estela M. Perlas-Bernabe, who advanced this 3-year prescriptive period, explained that it is based on the lapse of a prolonged period of time when passive recipients have not been notified of any illegality or irregularity in the allowances and benefits. It was thus pronounced in the *Cagayan de Oro* case that:

To determine what constitutes a significant period of time for this purpose, this Court adopts the proposal of Justice Perlas-Bernabe and recognizes three (3) years as a reasonable period for recipients to be notified of any illegality or irregularity in the allowances or benefits. The lapse of this period is sufficient to excuse recipients from refunding the amounts received on the grounds of equity and fairness. On the other hand, recipients with notice of the possible illegality or irregularity within this period shall be put on guard that they may be required to refund. Recipients who choose to spend the amount despite notice do so at their own risk. They are not excused from making a refund should the allowances and benefits be eventually disallowed with finality. (Underscoring in the original)

The present case, however, takes exception from the application of the 3-year prescriptive period considering the significant and peculiar fact in this case wherein the subject NHA employees knowingly and willingly executed notarized Deeds of Undertaking, implying that they were aware of the irregularity and illegality of the allowances and benefits they received. These employees furthermore authorized the NHA, through the Treasury Department, to deduct from their salaries or benefits due them the equivalent amount received, payable in equal monthly installments, for purposes of the refund. Clearly, these instruments gave them sufficient notice of the illegality and irregularity of the allowances and benefits which notice precludes the application of the 3-year prescriptive period. Notably, this prescriptive period

⁷² Id.

was intended to apply due to “the lapse of a reasonable period of time” that passive-recipients did not receive notice of any illegality or irregularity, which is not the case herein. All told, although it took more than three (3) years before the COA issued the NDs, the NHA employees who were passive recipients are still liable to refund the disallowed amounts.

*Prayer for the issuance of a
Temporary Restraining Order
and/or Writ of Preliminary
Mandatory Injunction*

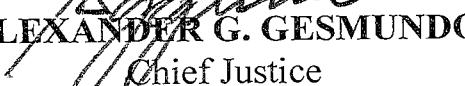
On July 6, 2020, the petitioners filed a Petition for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction⁵⁹ to nullify and set aside the Notice of Finality of Decision issued on March 4, 2020 by the COA. We note that in a Resolution dated August 25, 2020, the Supreme Court *En Banc* has resolved to deny the prayer for the issuance of a TRO and/or writ of preliminary mandatory injunction contained in G.R. No. 252584.⁶⁰

WHEREFORE, premises considered, the consolidated petitions are hereby **DISMISSED** for lack of merit. The decision dated January 26, 2018 of the Commission on Audit is **AFFIRMED *in toto***. The approving and certifying officers are solidarily liable for the return of the disallowed amounts in accordance with the notices of disallowance, while the payee-recipients are individually liable for the return of the amounts they respectively received.

SO ORDERED.


RICARDO R. ROSARIO
Associate Justice

WE CONCUR:

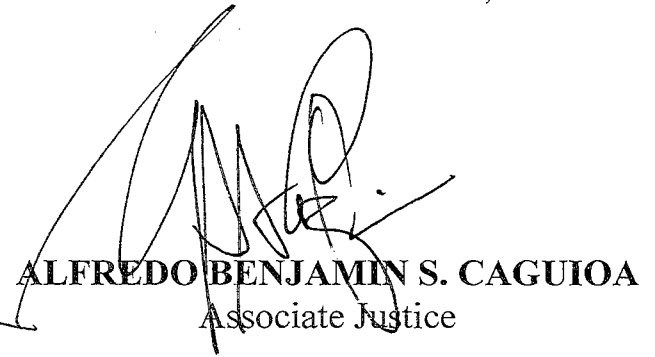

ALEXANDER G. GESMUNDO
Chief Justice

⁵⁹ *Rollo* (G.R. No. 252584), pp. 3-18.

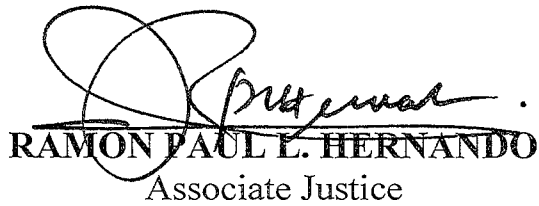
⁶⁰ *Rollo* (G.R. No. 239936), pp. 621-622.



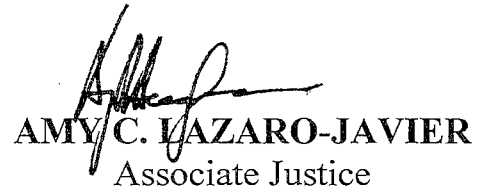
MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



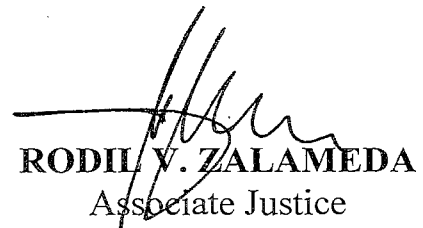
RAMON PAUL L. HERNANDO
Associate Justice



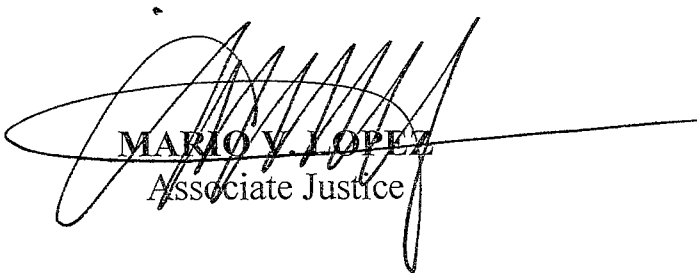
AMY C. LAZARO-JAVIER
Associate Justice



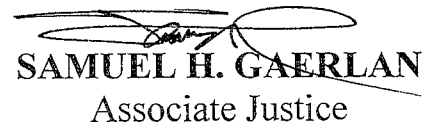
HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



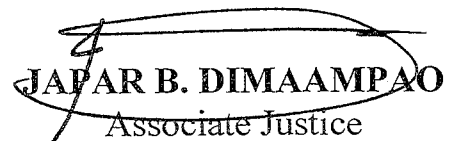
MARIO V. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



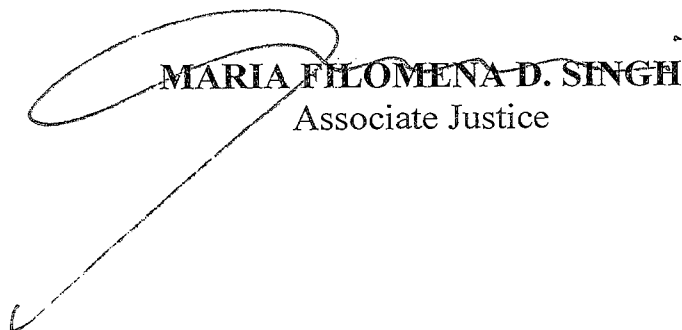
JAPAR B. DIMAAMPAO
Associate Justice



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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice