



Republic of the Philippines
Supreme Court
 Manila

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SUPREME COURT OF THE PHILIPPINES
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STO. CRISTO CONSTRUCTION,
 represented by its Proprietor,
NOEL J. CRUZ,

Petitioner,

G.R. No. 246777

Present:

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

- versus -

COMMISSION ON AUDIT,

Respondent.

Promulgated:

March 2, 2021

Done. Li. of Papa. Gant

X-----X

DECISION

DELOS SANTOS, J.:

This is a Petition for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court assailing Decision No. 2018-317² dated March 15, 2018 of the Commission on Audit (COA) which affirmed Notice of Disallowance (ND) No. 11-001-101-09/10³ dated July 11, 2011.

¹ *Rollo*, pp. 3-13.

² *Id.* at 22-28.

³ *Id.* at 48-51.

The Facts

Sto. Cristo Construction (petitioner) is a domestic corporation engaged in the construction business. Sometime in 2010, it was awarded government contracts for road rehabilitation/improvement in Mexico, Pampanga.⁴ In the same year, the road projects were implemented and completed.

From November 15 to 20, 2010, the Quality Assurance Unit (QAU) of the Department of Public Works and Highways (DPWH) reassessed 10 projects implemented by the DPWH-Pampanga 1st District Engineering Office (DEO). Because the reassessment yielded adverse findings, the Audit Team Leader (ATL) requested COA Technical Inspectors to conduct another inspection of the completed projects. The inspection report showed overstatement of embankment materials. Thereafter, the ATL issued four notices of disallowance disapproving the payment in the total amount of ₱22,626,714.71 for the 10 projects.⁵

One of the four notices was ND No. 11-001-101-09/10 dated July 11, 2011 (subject ND) which disallowed the amount of ₱14,926,319.76 representing the cost of deficiencies resulting from the overestimates in embankment materials in the total volume of 31,491.60 cubic meters in the projects awarded to petitioner. The persons⁶ held liable in the subject ND were:

| Persons Liable | Position/Designation | Nature of Participation in the Transactions |
|-----------------------|--|---|
| Jose G. Datu | District Engineer | [Approval of Program of Works] (POW)/Contract/[Statement of Works Accomplished] (SWA)/Payment |
| Manuel M. Pasco | Assistant District Engineer | Recommending approval of the transaction |
| Sotero L. Figureoa | Chief, Construction Section | Preparation of plans/POW/as-built plans and implementation processes |
| Amor Bien M. Aguas | Chief, Maintenance Section | Member, District Inspectorate Team |
| Adelwison P. Guevarra | Chief, Materials Quality Control Section | Member, District Inspectorate Team |
| Angelita Z. Pascual | Chief, Planning & Design Section | Member, District Inspectorate Team |
| Oscar A. Erese | Project Engineer | Management/Supervision of the project from start to completion |

⁴ Petitioner's projects involve the rehabilitation/improvement of the following roads in Mexico, Pampanga: (1) San Vicente-Pangatlan Road; (2) Divisoria Mabalukluk Road; (3) Camuning-Eden Road; (4) Acli-Camuning Road; (5) San Antonio-San Roque Road; (6) San Agustin-San Patricio Road; and (7) Eden-Suclaban Road.

⁵ *Rollo*, p. 24.

⁶ *Id.* at 49.

| | | |
|--------------|-------------------|--|
| Mario Medina | Resident Engineer | Management/Supervision of the project from start to completion |
| Noel Cruz | Owner/Manager | Contractor |

The officials and personnel of DPWH-Pampanga 1st DEO who were held liable filed an appeal arguing that: (1) the recommendations of the ATL have no factual and legal basis since the projects were all pre-audited for partial and final payments; (2) when the pre-audit findings were reversed, erosion and surface run-off have already affected the condition of the projects due to typhoons in 2010; and (3) the subject ND had become moot since the projects were already released and finally paid to the contractor. Being *fait accompli*, the disallowance cannot be ordered.⁷

In a Letter⁸ dated January 9, 2012, Engineer Jose Datu (Engr. Datu), District Engineer of DPWH-Pampanga 1st DEO, requested to file an appeal from the four notices of disallowance. He stated that their office had already instructed the contractors identified in the notices of disallowance to institute corrective measures at their own expense considering that the projects were still within their warranty period. He also noted that these corrective measures have been substantially completed.

On January 13, 2012, Audit Observation Memorandum (AOM) No. 12-001⁹ was issued showing the overstatement of embankment materials, as well as the value of the overestimates which amounted to ₱22,626,714.71.

The Ruling of the COA Regional Office No. III

In Decision No. 2013-41¹⁰ dated June 3, 2013, the COA Regional Director affirmed the four notices of disallowance and declared:

- 1) While it is true that pre-audit was adopted in 2010, when the projects in question were implemented, and they were inspected by COA Technical Inspectors whose reports were made as guides by the auditors in allowing payments for first and final claims of the contractors, the fact will not preclude the auditor to re-perform pre-audit activities in post-audit if they are necessary; and
- 2) Both the findings of QAU, DPWH and the COA Technical Inspectors are very authoritative compared to the mere general negation of the appellants.¹¹

⁷ Id. at 24-25.

⁸ Id. at 78-79.

⁹ Id. at 80-82.

¹⁰ Id. at 25.

¹¹ Id.

On September 9, 2013, Noel J. Cruz (Cruz), proprietor of petitioner, wrote to Engr. Enrico S. Guilas (Engr. Guilas), Officer-in-Charge, Office of the District Engineer, DPWH-Pampanga 1st DEO, requesting for the conduct of mint survey in order to quantify and evaluate the rectifications he has made pursuant to the instructions of Engr. Datu and Engr. Sotero L. Figueroa (Engr. Figueroa), Chief of Construction Section.¹²

On September 13, 2013, Engr. Guilas responded to Cruz and scheduled the mint surveys on several dates of the same month.¹³

On November 13, 2013, the DPWH-Pampanga 1st DEO issued a Memorandum¹⁴ confirming the inspection of the projects undertaken by the petitioner. It noted the petitioner's rectification works done outside the approved plan as reflected in the contract.

On February 27, 2014, petitioner filed an Appeal¹⁵ from the subject ND. Cruz averred that the subject ND was not delivered to him personally and that he only obtained a copy of it in 2013. He claimed that the rectifications have been made under the supervision and direction of DPWH representatives and in the presence of the local *barangay* officials. He likewise alleged that the engineers who inspected the construction sites did not consider the deterioration of the road, the effects of flooding, wear and tear, and the fact that there is no depreciation of the project.¹⁶

The Ruling of the COA Proper

In Decision No. 2015-11¹⁷ dated April 6, 2015, the COA declared the four notices of disallowance final and executory.

Petitioner moved for reconsideration of the April 6, 2015 Decision. Cruz reiterated that he did not receive the subject ND in violation of his right to due process.

On March 15, 2018, the COA rendered Decision No. 2018-317¹⁸ with the dispositive portion as follows:

¹² Id. at 29.

¹³ Id. at 30.

¹⁴ Id. at 33-34.

¹⁵ In its Appeal Memorandum, petitioner also sought the reconsideration of Order of Execution dated July 30, 2013. Said Order was issued by the Regional Director of COA Regional Office No. III to enforce ND No. 12-002-01 dated July 31, 2012 which disallowed the payment in the amount of ₱300,061.51 for the construction of Multi-Purpose Building of Anderson Elementary School in Arayat, Pampanga. Petitioner was also the contractor of the project.

¹⁶ *Rollo*, pp. 37-44.

¹⁷ *Supra* note 10.

¹⁸ *Supra* note 2.

WHEREFORE, premises considered, the appeal of Mr. Noel J. Cruz, Proprietor, Sto. Cristo Construction, from Commission on Audit (COA) Regional Office No. III Order of Execution dated July 31, 2012, on the payment for the construction of Multi-Purpose Building, Anderson Elementary School, Arayat, Pampanga, in the amount of P300,061.51, is deemed MOOT and ACADEMIC, while the appeal from ND No. 11-001-101-09/10 dated July 11, 2011 and Motion for Reconsideration of COA Decision No. 2015-11 dated April 6, 2015, both on the excess payment by the Department of Public Works and Highways-Pampanga 1st [District Engineering] Office, resulting from overestimates in embankment materials in seven infrastructure projects in Mexico, Pampanga, in the total amount of P14,926,319.76, are hereby DENIED for lack of merit.¹⁹

Considering the lack of service of the subject ND, the COA decided the appeal on its merits.

The COA ratiocinated that there is no showing that rectifications have been made and that they have been confirmed as sufficiently compliant with the COA reevaluation. It opined that if the rectifications were indeed requested by the DPWH and completed by Cruz, the DPWH officials and personnel should have invoked these as defenses in their appeal from the notices of disallowance before the COA Proper. Moreover, it noted that the fact that both the QAU of the DPWH and the COA Technical Inspectors have discovered adverse findings in the reassessment of petitioner's projects reinforces the subject ND. The COA did not find reason to question the technical methods used in said reassessment as the inspecting officers enjoy the presumption of regularity in the performance of their duties.²⁰

Hence, this petition.

Arguments of the Parties

Petitioner argues that the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not appreciate the rectification works undertaken by the petitioner in rendering the assailed Decision.

Petitioner asseverates that the COA erred in not giving credence to its claim that the DPWH requested the implementation of the rectification works and that the DPWH found the works sufficient. It stresses that at the time the DPWH officials filed their appeal from the notices of disallowance, it had no knowledge of the disallowance and the rectification works have yet to be undertaken.²¹

¹⁹ *Rollo*, p. 27.

²⁰ *Id.*

²¹ *Id.* at 10.



Petitioner maintains that the COA violated its right to due process when it rendered the assailed Decision *sans* proper basis to support the same. It *posits* that the COA erred when it relied on the presumption of regularity of performance of official duty in arriving at its decision, without properly considering the evidence presented by the petitioner.²²

The COA, through the Office of the Solicitor General, for its part, maintains that the fact that the DPWH officials did not invoke petitioner's rectifications as defense in their appeal only shows that they were not convinced that the deficiencies found during the evaluation and inspection of the projects had been sufficiently addressed.²³ It declares that the pieces of documentary evidence relied upon by petitioner, are all self-serving because the truthfulness of the contents thereof was not verified nor confirmed by the QAU of the DPWH and the COA Technical Inspectors.²⁴ It stresses that without the reevaluation or reassessment of the COA Technical Inspectors, a notice of disallowance cannot be reversed or set aside based on a mere certification from the agency being audited that rectifications had already been made on the projects subject of the ND.²⁵

The Issue

Whether or not the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it sustained the disallowance of the amount paid to the contractor despite the rectification works undertaken by the latter in the subject infrastructure projects.

The Ruling of the Court

The petition is barren of merit.

Jurisprudence defines grave abuse of discretion as the capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility. The abuse of discretion must be grave, 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.²⁶ In a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, the petitioner must satisfactorily show that the quasi-judicial authority committed not only a reversible error,

²² Id. at 12.

²³ Id. at 70.

²⁴ Id. at 71.

²⁵ Id.

²⁶ *Abpi v. Commission on Audit*, G.R. No. 252367, July 14, 2020; *Fortune Life Insurance Company, Inc. v. Commission on Audit Proper*, 752 Phil. 97, 107 (2015).

but grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed decision, resolution, or order.²⁷

An inspection conducted by the COA Technical Inspectors revealed that the road projects of herein petitioner suffered cost deficiencies in the total amount of ₱14,926,319.76 resulting from overestimates in embankment materials. Prior to said inspection, the QAU of the DPWH uncovered adverse findings when it reassessed petitioner's projects. Petitioner claims that upon receipt of the copy of the subject ND, it made the necessary corrective actions to satisfy the required volume of materials upon the instruction of Engr. Datu and Engr. Figueroa. Thus, it insists that the COA should have reversed its Decision affirming the subject ND since the deficiencies have been sufficiently addressed in its rectification works. But a careful reading of the subject ND and AOM No. 12-001 will show that the **petitioner misconstrued the real import of the disallowance**. Pertinent portions of the subject ND and AOM No. 12-001 read:

ND No. 11-01-101-09/10

The total amount of P14,926,319.76 was disallowed in audit resulting from over estimates in embankment materials (Item 104) totaling 31,491.60 cubic meters as indicated in the individual Re-Inspection Report for each of the seven (7) infrastructure projects rendered on various dates by the Technical Audit Division-Pampanga Group, COA Regional Office No. III, City of San Fernando, Pampanga.

x x x x

Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowances not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under sections 48 and 51 of P.D. 1445.²⁸

AOM No. 12-001

We have reviewed the calendar year 2011 Technical Evaluation Reports rendered by the Technical Audit Specialists in the inspection of various projects implemented by DPWH-Pampanga 1st DEO for calendar year 2010 and noted the following observations, to wit:

Over estimates in embankment materials resulting from a re-inspection/re-evaluation of ten (10) infrastructure projects implemented by the agency for CY 2010.

Deficiencies found in the re-inspection/re-evaluation of ten (10) infrastructure projects conducted by the Technical Audit Specialists-Pampanga Team during the first quarter of 2011 resulted to a total cost deficiency of P22,626,714.71.

²⁷ *Career Executive Service Board v. Commission on Audit*, 833 Phil. 433, 444 (2018).

²⁸ *Rollo*, pp. 49-51.

Annex "A" of the Revised Implementing Rules and Regulations of R.A. 9184 (Detailed Engineering for the Procurement of Infrastructure Projects) provides that:

"3(d) Quantities – All construction quantities shall be computed to a reasonable accuracy of not more than plus or minus ten percent (10%) of the final quantities of the as-built structure."

"3(i) Program of Work – The program of work shall include, among other things, estimates of the work, items, quantities, and costs and a PERT/CPM network of the project activities."

The DPWH-Pampanga 1st DEO implemented various projects for CY 2010 out of which ten (10) projects were inspected/re-evaluated and the following overstatement of embankment materials were reported:

| Name of Project/Contractor/Year Implemented | Cost Deficiency | Overstatement of Embankment Materials |
|--|-----------------|---------------------------------------|
| Sto. Cristo Construction (2010) | | |
| 1. Rehabilitation/Improvement of San Vicente-Pangatlan Rd., Mexico, Pampanga | P 540,983.00 | 1,176.05 cubic meters |
| 2. Rehabilitation/Improvement of Divisoria-Mabalukuk Rd., Mexico, Pampanga | 916,387.45 | 1,995.40 cubic meters |
| 3. Rehabilitation/Improvement of Camuning-Eden Rd., Mexico, Pampanga | 1,140,678.00 | 2,469.00 cubic meters |
| 4. Rehabilitation/Improvement of Acli-Camuning Rd., Mexico, Pampanga | 3,582,484.20 | 7,729.20 cubic meters |
| 5. Rehabilitation/Improvement of San Antonio-San Roque Rd., Mexico, Pampanga | 3,787,660.00 | 8,270.00 cubic meters |
| 6. Rehabilitation/Improvement of San Agustin-San Patricio Rd., Mexico, Pampanga | 2,486,559.11 | 4,869.40 cubic meters |
| 7. Rehabilitation/Improvement of Eden-Suclaban Rd., Mexico, Pampanga | 2,471,568.00 | 4,983.00 cubic meters |
| R.D. Sadsad Construction (2010) | | |
| 8. Repair/Improvement of Inuman Baka Creek-Sta. Ana Mexico Section, Sta. Ana, Mexico, Pampanga | 2,935,626.50 | 27,985.00 cubic meters |
| M.S. Cruz Builders (2010) | | |
| 9. Rehabilitation/Improvement of San Rafael-Sabanilla Rd., Mexico, Pampanga | 944,031.90 | 1,869.00 cubic meters |
| ERMY Construction (2010) | | |
| 10. Rehabilitation/Improvement of San Jose Malino-Anao- | 3,820,736.55 | 8,073.40 cubic meters |

| | | |
|------------------------------------|----------------|---|
| Cawayan Rd., Mexico[,] Pampanga | | |
| Total | P22,626,714.71 | 31,492.05 cubic meters ²⁹ |

Individual re-inspection reports were rendered by the TAS on various dates indicating therein the variances in embankment materials. The total cost of deficiencies amounted to P22,626,714.71. Corresponding Notices of Disallowance for the ten (10) projects, all dated July 11, 2011, have been issued to the management duly received on July 20, 2011.

Had a complete detailed engineering been conducted, there will be no overestimation of embankment materials in the Program of Work.

Overstatement of embankment materials will result to excessive costing leading to possible loss of government funds if not recovered from the concerned contractors.

On January 11, 2012, management forwarded their appeal on the disallowance to Regional Director, COA Regional Office No. III.

Recommendation:

We recommend that management as well as all the persons determined liable **refund the value of the total overestimates** in embankment materials. Management should also exercise closer supervision and prudence in the implementation of projects to ensure that these are in accordance with plans and specifications. Likewise, the agency officials concerned should see to it that complete detailed engineering are prepared for each project to be implemented, not only for ensuring compliance, but also for validation and monitoring purposes.³⁰ (Emphases supplied)

The subject ND was issued because of the “overestimation of embankment materials in the Program of Work.” The audit team expressly stated in the AOM that there would have been no overestimation had a complete detailed engineering been conducted.

Detailed Engineering forms part of the procurement planning stage. The DPWH Manual of Procedures for the Procurement of Locally-Funded Infrastructure Projects through Public Bidding (DPWH Manual) requires that the procuring entity shall initiate procurement only after the detailed engineering for the project, including technical investigations, surveys and designs, and acquisition of the right-of-way, has been sufficiently carried out. The detailed engineering must be undertaken in accordance with the standards and specifications prescribed by the Secretary of the DPWH or his duly authorized representative, and in accordance with the provisions of

²⁹ The total volume of the overestimates in embankment materials for the 10 projects is 69,419.40 cubic meters.

³⁰ *Rollo*, pp. 80-82.

Annex "A" of IRR-A of Republic Act No. 9184.³¹ Work under detailed engineering includes the **preparation of quantity estimates**. Under the DPWH Manual, all construction quantities shall be estimated with a degree of accuracy of not more than plus or minus 10% of final quantities of the as-built structure.³² It further provides:

The DPWH shall implement, at the Central, Regional, and District Offices, a system for the review and assurance of the quality of detailed engineering outputs to ensure that they conform to the prescribed design standards and will allow estimates of quantities to be made within plus or minus ten percent (10%) of the final values of the completed structure. The survey and design data of structural components that are prone to significant overstatement and variation, such as earthworks, and base course, shall be **especially scrutinized** to assure the integrity of the design and estimates.³³ (Emphasis supplied)

In this case, the quantity or volume estimates of the embankment materials, which estimates were used in the Program of Work during procurement and presumably were stipulated in the contracts between the DPWH and the petitioner, turned out to be significantly more than the quantity or volume of materials actually used in the road projects. The failure of the officials of the DPWH-Pampanga 1st DEO to satisfactorily prepare the quantity and cost estimates of the embankment materials in the detailed engineering phase of the projects resulted in the excess payment to petitioner in the total amount of ₱14,926,319.76. The audit team unequivocally stated that excessive costing and overestimated quantities of embankment materials would lead to wastage of government coffers if the disallowed amount is not recovered from the identified contractors. It is crystal clear that the subject ND was issued because of this excess payment caused by the overestimation which transpired prior to the construction and implementation of the road projects and not because of any defect, or deficiency in the performance of petitioner's works. What is at issue here is the excessive use of public funds to procure a surplus of embankment materials, which can only be settled upon the return of the excess payment made to petitioner. Indubitably, the COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it did not consider the rectification works conducted by the petitioner in the road projects.

Anent the issue of due process, the Court is not convinced that petitioner's right to due process was violated. Under the 2009 Revised Rules of Procedure of the COA, an aggrieved party may appeal the decision of the

³¹ The 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, otherwise known as The Government Procurement Reform Act.

³² DPWH Manual of Procedures for the Procurement of Locally-Funded Infrastructure Projects through Public Bidding, Item 2.2.2.3.f.; 2016 IRR of R.A. No. 9184, Item 3(d).

³³ DPWH Manual of Procedures for the Procurement of Locally-Funded Infrastructure Projects through Public Bidding, last paragraph of Item 2.2.2.3.

auditor by filing an appeal memorandum with the Director who has jurisdiction over the agency under audit within six months after receipt of the decision.³⁴ In case of adverse decision by the Director, the aggrieved party may file a petition for review with the Commission Secretariat within the time remaining of the prescribed six-month period.³⁵

Here, petitioner questioned the disallowance less than 32 months from the issuance of the subject ND. Petitioner claims that he only received a copy of the subject ND sometime in late 2013, but failed to allege and prove the exact date of receipt which is determinative of whether the appeal was timely filed. The records are bereft of any showing when petitioner received a copy of the subject ND. This notwithstanding, the COA accommodated petitioner's appeal, gave it the opportunity to present its side of the controversy, and decided its appeal on the merits. This is not to mention that what it filed before the Commission Secretariat was an appeal memorandum instead of a petition for review. Accordingly, petitioner cannot justifiably claim that it was denied due process.

Further, petitioner cannot fault the COA for relying on the presumption of regularity in the performance of official duty in the assailed Decision. First, the subject ND obligates the officials of the DPWH-Pampanga 1st DEO and petitioner to return the total value of the overestimates. It does not contemplate the conduct of the rectification works as sufficient compliance of petitioner's obligation. Second, there was no compelling reason to disturb the uniform factual findings of the DPWH-QAU and its own Technical Inspectors who have the skill, expertise, and experience to conduct the reassessment and inspection. Finally, there is no evidence or hint of irregularity in the performance of the DPWH-QAU and the COA Technical Inspectors of their duties. Settled is the rule that every public official is entitled to the presumption of good faith in the discharge of official duties such that in the absence of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.³⁶

Time and again, we have recognized the key role of the COA as the guardian of public funds and properties. It is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law.³⁷ The COA is accorded wide latitude and complete discretion to exercise its constitutional duty to the extent that the Court generally sustains the COA's decisions in recognition of its expertise in the implementation of the laws it has been entrusted to enforce, especially if its findings are

³⁴ Revised Rules of Procedure of the Commission on Audit (2009), Rule V, Sections 1, 2, and 4.

³⁵ Id. at Sections 1, 2, and 3.

³⁶ *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765 (1998).

³⁷ *Nayong Pilipino Foundation, Inc. v. Chairperson Pulido Tan*, 818 Phil. 406, 414 (2017).



supported by substantial evidence.³⁸ However, when there is a clear showing that the COA has acted without, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, the Court shall set aside the COA's findings.³⁹ Such grave abuse of discretion was not established in this case.

WHEREFORE, in view of the foregoing reasons, the Court **DISMISSES** the Petition for *Certiorari* of Sto. Cristo Construction, represented by its proprietor, Noel J. Cruz and **AFFIRMS** the Commission on Audit Decision No. 2018-317 dated March 15, 2018.

SO ORDERED.


EDGARDO L. DELOS SANTOS
Associate Justice

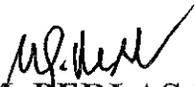
³⁸ See *Development Bank of the Philippines v. Commission on Audit*, 808 Phil. 1001, 1017 (2017).

³⁹ *National Power Corp. Board of Directors v. Commission on Audit*, G.R. No. 242342, March 10, 2020.

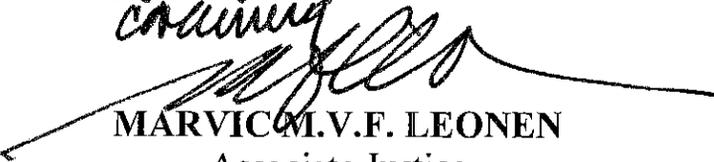
WE CONCUR:


DIOSDADO M. PERALTA
 Chief Justice

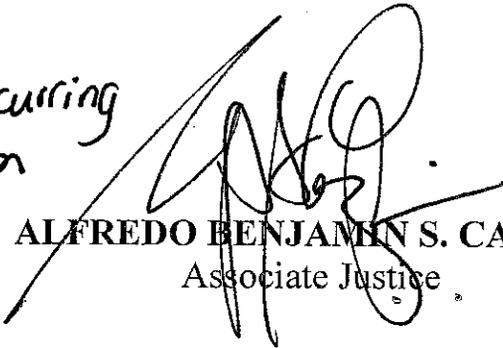
Please see Concurring Opinion


ESTELA M. PERLAS-BERNABE
 Associate Justice

I join Justice Perlas Bernabe concurring


MARVIC M.V.F. LEONEN
 Associate Justice

See Concurring Opinion

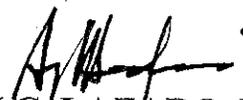

ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

Agreements
ALEXANDER G. GESMUNDO
 Associate Justice

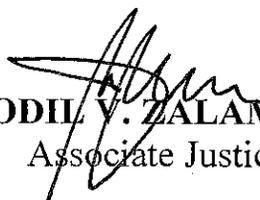

RAMON PAUL L. HERNANDO
 Associate Justice

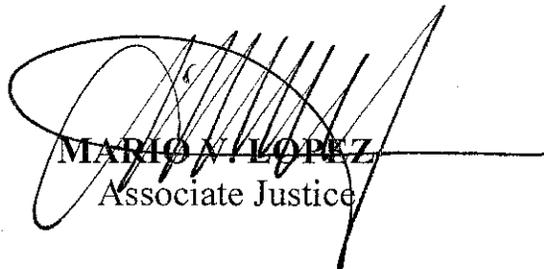
I join concurring opinion of J. Perlas-Bernabe

ROSMARI D. CARANDANG
 Associate Justice


AMY C. LAZARO-JAVIER
 Associate Justice


HENRI JEAN PAUL B. INTING
 Associate Justice


RODIL V. ZALAMEDA
 Associate Justice


MARIO A. LOPEZ
 Associate Justice


SAMUEL H. GAERLAN
Associate Justice

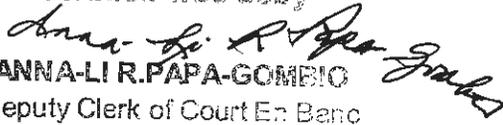

RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

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

Certified True Copy

ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court