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Republic of the Philippines  
Supreme Court

EN BANC

NELSON R. AVANCEÑA,  
HENRY V. PALARCA, NIDA B.  
TOLENTINO, TEODORA M. DE  
GUZMAN, JERRY V. CALAMBA  
and RODEL B. LOBATON,  
Petitioners,

G.R. No. 254337

Present:

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

- versus -

COMMISSION ON AUDIT and MA.  
CORAZON S. GOMEZ in her  
capacity as Regional Director of COA  
Regional Office No. IV-B  
(MIMAROPA),  
Respondents.

Promulgated:  
June 18, 2024

X-----X

DECISION

SINGH, J.:

\* On Official Leave.  
\*\* Per Special Order No. 3097 dated June 13, 2024.  
\*\*\* On Official Business but left votes.  
\*\*\*\* On Official Business.

This is a Petition for *Certiorari*<sup>1</sup> under Rule 64 of the Rules of Court to annul the Decision No. 2020-341<sup>2</sup> dated January 31, 2020 of the Commission on Audit (COA) Commission Proper (**COA Commission Proper**). The COA affirmed with modification COA RO IV-B Decision No. 2018-29<sup>3</sup> dated May 31, 2018 of COA Regional Director IV-B, Ma. Corazon S. Gomez (**RD Gomez**), and the Notices of Disallowance Nos. 17-001-100(14), 17-003-100-(14) to 17-008-100-(14) and 17-011-100-(14), all dated January 11, 2017, on the procurement of various office supplies, food, and other items in 2014 amounting to PHP 8,191,695.83.<sup>4</sup>

### *The Facts*

Nelson R. Avanceña (**Avanceña**), Henry V. Palarca (**Palarca**), Nida B. Tolentino (**Tolentino**), Teodora M. De Guzman (**De Guzman**), Jerry V. Calamba (**Calamba**), and Rodel B. Lobaton (**Lobaton**) (collectively, **Avanceña et al.**) are officials and employees of the Municipality of Dr. Jose P. Rizal, Palawan (**Municipality**), and are likewise the duly designated members and secretariat of its Bids and Awards Committee (**BAC**).

From September to December 2014, the Municipality made several procurements from four merchants through Small Value Procurement, pursuant to BAC Resolution Nos. 2014-01-03, 2014-01-04, 2014-01-13 and 2014-04-34 (collectively, the **assailed BAC Resolutions**):

BAC Resolution No. 2014-01-03, dated February 18, 2014: : A Resolution recommending to the Head of the Procuring Entity, Hon. Alrie D. Nobleza, to use Small Value Procurement in the procurement of goods involving an amount not exceeding the threshold of [PHP 100,000.00] in connection with the requirements of the Office of the Municipal Social Welfare and Development on the **Women's Day celebration for 2014**.<sup>5</sup> (Emphasis in the original)

BAC Resolution No. 2014-01-04, dated February 18, 2014: : A Resolution recommending to the Head of the Procuring Entity, Hon. Alrie D. Nobleza, to use Small Value Procurement in the procurement of goods involving an amount not exceeding the threshold of [PHP 100,000.00] in connection with the requirements of the various departments of the Municipal

<sup>1</sup> *Rollo*, pp. 3–40.

<sup>2</sup> *Id.* at 41–53. Penned by Commission on Audit Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc.

<sup>3</sup> *Id.* at 55–79.

<sup>4</sup> *Id.* at 55.

<sup>5</sup> *Id.* at 121–122.

Government of Rizal on its **Biri-Birian Program for 2014.**<sup>6</sup> (Emphasis in the original)

BAC Resolution No. 2014-01-13, dated April 8, 2014: : A Resolution recommending to the Head of the Procuring Entity, Hon. Alrie D. Nobleza, to use Small Value Procurement in the procurement of goods involving an amount not exceeding the threshold of [PHP 100,000.00] in connection with the requirements of the various committees of the Municipal Government of Rizal on its **31<sup>st</sup> Founding Anniversary celebration for 2014.**<sup>7</sup> (Emphasis in the original)

BAC Resolution No. 2014-04-34, dated June 11, 2014 : A Resolution changing the mode of procurement as indicated in the Approved Procurement Plan for [Calendar Year (CY)] 2014 from competitive bidding to Small Value Procurement in the procurement of goods in connection with the requirements of the Municipal Government of Rizal in its participation in the **Baragatan Festival 2014**, provided it does not exceed the threshold of [PHP 100,000.00], and concurrently recommending approval to the Head of the Procuring Entity, Hon. Alrie D. Nobleza.<sup>8</sup> (Emphasis supplied)

Based on these BAC Resolutions, the COA Regional Office No. IV-B (**Regional Office**) issued eight Notices of Disallowance grounded on:

1. Non-submission of the documents stated in the Notices of Suspension Nos. 15-01-101-(14) to 15-05-101-(14);
2. The procurement violated [Republic Act No.] 9184<sup>9</sup> and its 2009 Revised Implementing Rules and Regulations (**IRR**);
3. The purchase requests contained brand names, in violation of Section 18 of [Republic Act] No. 9184;
4. The contracts/purchase orders were divided into smaller quantities and amounts or splitting of contracts to evade or circumvent the requirement of public bidding, contrary to Section 54.1 of the 2009 Revised IRR of [Republic Act] No. 9184;
5. The BAC Resolutions recommended to the HOPE the resort to negotiated procurement-[Small Value Procurement] as an alternative mode of procurement, but the procured goods were mostly readily available or off-the-shelf goods, contrary to Sections 53.9 and 52 of the 2009 Revised IRR [of Republic Act No. 9184]; and

<sup>6</sup> *Id.* at 125-126.

<sup>7</sup> *Id.* at 127-128.

<sup>8</sup> *Id.* at 123-124.

<sup>9</sup> Republic Act No. 9184 (2002). Government Procurement Reform Act.

6. There was no certification was (sic) secured from the Department of Budget and Management – Procurement Service that the goods to be procured are not available, contrary to Section 52.1 of the same Revised IRR.<sup>10</sup> (Citations omitted)


These Notices of Disallowance became final and executory when Avanceña et al. failed to file an appeal within the reglementary period of six months under Rule V, Section 4 of the 2009 Revised Rules of Procedure of the COA, in relation to Section 17.1 of the COA Rules and Regulations on the Settlement of Accounts.<sup>11</sup>

The violations are summarized as follows:

Name	Position/ Designation	Notice of Disallowance (ND) No.	Nature of Participation in the Transaction
1. Alrie D. Nobleza	Former Mayor	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14)	<ul style="list-style-type: none"> <li>● Approved and signed the undated and unnumbered disbursement vouchers;</li> <li>● Signed the unnumbered and undated obligation requests;</li> <li>● Requested and approved the undated and unnumbered purchase orders;</li> <li>● Accepted the goods delivered and affixed his signature on the inspection and acceptance reports;</li> <li>● Requested, approved, and received the undated and unnumbered requisition and issue slips;</li> <li>● Approved BAC Resolutions</li> </ul>
2. Rufina B. Bungalso	Municipal Treasurer/BAC Member	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14)	<ul style="list-style-type: none"> <li>● Signed the undated and unnumbered disbursement vouchers;</li> <li>● Disbursed and paid the supplier;</li> <li>● Signed the report of disbursements;</li> <li>● Failed to comply with the posting requirement of the subject procurement; and</li> <li>● Failed to observe the guidelines and procedures of procurement in accordance with RA No. 9184.</li> </ul>

<sup>10</sup> *Rollo*, p. 42-43.

<sup>11</sup> *Id.* at p. 72.




3. Edgardo P. Cayaon	Senior Bookkeeper	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14)	<ul style="list-style-type: none"> <li>● Prepared the journal entry vouchers; and</li> <li>● Received the submitted report of disbursements</li> </ul>
4. Hilarion M. Torres, Jr.	Municipal Accountant/ Inspection Officer	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14)	<ul style="list-style-type: none"> <li>● Certified and approved the journal entry vouchers;</li> <li>● Signed the undated and unnumbered disbursement vouchers as to the completeness of supporting documents and allotment obligated for the specific purpose;</li> <li>● Signed the unnumbered and undated obligation requests;</li> <li>● Signed the inspection and acceptance reports; and</li> <li>● Signed the requisition and issue slips</li> </ul>
5. Henry V. Palarca	Municipal Agriculturist/ BAC Member	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14), ND No. 17-006-100-(14), ND No. 17-007-100-(14), ND No. 17-008-100-(14), ND No. 17-011-100-(14)	<ul style="list-style-type: none"> <li>● Failed to comply with the posting requirement of the subject procurement; and</li> <li>● Failed to observe the guidelines and procedures in accordance with RA No. 9184</li> </ul>
Nida B. Tolentino	Municipal Assessor/BAC Member	ND No. 17-006-100-(14), ND No. 17-007-100-(14),	
Teodora M. De Guzman	Municipal Civil Registrar/ BAC Member	ND No. 17-006-100-(14), ND No. 17-007-100-(14),	
6. Jerry V. Calamba, Jr.	Municipal Environmental and Natural Resources Officer/BAC Member	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14), ND No. 17-008-100-(14),	



		ND No. 17-011-100-(14)	
7. Rodel B. Lobaton	Municipal Engineer/BAC Member	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14), ND No. 17-008-100-(14), ND No. 17-011-100-(14)	
8. Nelson B. Avanceña	Head, BAC Secretariat	ND No. 17-001-100-(14), ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14), ND No. 17-006-100-(14), ND No. 17-007-100-(14), ND No. 17-008-100-(14), ND No. 17-011-100-(14)	
9. Nena B. Bungalso	Administrative Assistant II	ND No. 17-004-100-(14)	<ul style="list-style-type: none"> <li>● Disbursed and paid the supplier; and</li> <li>● Signed the report of disbursement.</li> </ul>
10. Melinda G. Silapan	Ticket Checker/Special Disbursing Officer	ND No. 17-005-100-(14)	
11. NBL Smart Source Enterprises	Payees	ND No. 17-001-100-(14)	<ul style="list-style-type: none"> <li>● Received the payment.<sup>12</sup></li> </ul>
12. EECC Store		ND No. 17-003-100-(14), ND No. 17-004-100-(14), ND No. 17-005-100-(14), ND No. 17-011-100-(14),	
13. One Source The Uniform		ND No. 17-006-100-(14), ND No. 17-007-100-(14),	

<sup>12</sup> *Id.* at 62-70.



14. Dulsora Trading		ND No. 17-008-100-(14)	
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*The Decision of the COA Regional Office IV-B*

The COA Regional Office, in COA RO IV-B Decision No. 2018-29,<sup>13</sup> dated May 31, 2018, affirmed the Notices of Disallowance and denied Avanceña et al.'s appeal for lack of merit.<sup>14</sup>

The Regional Office cited Avanceña et al.'s violations as:

1. The purchase orders attached to their appeal were undated, lacked the proper reference numbers, and/or failed to specify the requesting department/office; and
2. The procuring entity failed to comply with the procedure on Small Value Procurement under Item 3, Appendix 18 of the 2009 Revised IRR of Republic Act No. 9184 for the following reasons:
  - 2.1.No request for quotations were prepared nor sent to, at least, three suppliers of known qualifications;
  - 2.2.Non-compliance with the posting requirement on the Philippine Government Electronic Procurement System (**PhilGEPS**) website;
  - 2.3.No proof of unforeseen contingency requiring the immediate purchase of the supplies to allow the request for quotations to be sent to only one supplier and the dispensing of the posting requirement;
  - 2.4. The goods procured were ordinary or regular supplies, hence, resort to Small Value Procurement was misplaced; and
  - 2.5. There was *prima facie* evidence of splitting of government contracts to circumvent the requirement of public bidding.<sup>15</sup>

<sup>13</sup> *Id.* at 55-79.

<sup>14</sup> *Id.* at 79.

<sup>15</sup> *Id.* at 8-9 & 75-76.



*The Decision of the COA Commission Proper*

In a Decision,<sup>16</sup> dated January 31, 2020, the COA Commission Proper denied Avanceña et al.'s Petition for Review for lack of merit:

**WHEREFORE**, premises considered, the Petition for Review of [Avanceña, et al.], members and secretariat of the Bids and Awards Committee (BAC), Municipal Government of Dr. Jose P. Rizal, Palawan, is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit Regional Office No. IV-B Decision No. 2018-29[,] dated May 31, 2018[,] and Notice of Disallowance (ND) Nos. 17-001-100(14), 17-003-100(14) to 17-008-100(14), and 17-011-100(14)[,] all dated January 11, 2017, on the procurement of various office supplies, food[,] and other items in calendar year 2014, in the amount of [PHP] 8,191,695.83, are **AFFIRMED** with **MODIFICATION**, in that, Mr. Edgardo P. Cayaon, is excluded as a person liable.<sup>17</sup> (Emphasis in the original)

The COA Commission Proper affirmed the findings of its Regional Office and ruled that the procurement of supplies for the festivals was not included in the Annual Procurement Plan (APP) and in the Revised APP of the Municipality for CY 2014, save for the *Beri-Berian* Program; their resort to Small Value Procurement was unjustified; and that there was splitting of government contracts.<sup>18</sup>

The COA Commission Proper emphasized that the BAC was responsible for ensuring that the procuring entity abided by the standards in Republic Act No. 9184 and its IRR.<sup>19</sup> Here, however, it was the BAC that violated the law when it recommended Small Value Procurement as an alternative mode of procurement to the Municipality, when there was no basis to do so.<sup>20</sup> As such, the disallowances were sustained.

The COA Commission Proper excluded Senior Bookkeeper, Edgardo P. Cayaon, whose participation was limited to preparing the journal entry vouchers and receiving the disbursement vouchers, which were unrelated to the grounds for disallowance. Additionally, it ordered the reevaluation of the participation of the BAC Chairman, Engineer Gregorio V. Baluyot, who was excluded from the Notices of Disallowance.<sup>21</sup>

Avanceña et al. thus filed the present Petition for *Certiorari* claiming that the COA Commission Proper committed grave abuse of discretion amounting to lack or excess of jurisdiction when it "totally ignored" their

<sup>16</sup> *Id.* at 41–53 by Commissioners Michael G. Aguinaldo, Jose A. Fabia and Roland C. Pondoc.

<sup>17</sup> *Id.* at 51.

<sup>18</sup> *Id.* at 48–51.

<sup>19</sup> *Id.* at 50.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 51–52.





arguments that the BAC Resolutions never recommended purchase through Small Value Procurement for a certain number of expenditures included in the Notices of Disallowance; that the procurement was justified; and that the Municipality did not commit splitting of government contracts.<sup>22</sup>

Avanceña et al. asserted that the four assailed BAC Resolutions pertain only to a total expenditure of PHP 1,131,925.04 and not the PHP 8,191,695.83 stated in the eight Notices of Disallowance. Assuming that there were other expenditures made, making it appear that the same were spent for the activities, programs or celebrations, Avanceña et al. claimed that those expenditures did not pass through their hands, and were thus not official expenditures.<sup>23</sup>

Avanceña et al. also offered a Certification<sup>24</sup> dated July 5, 2018 issued by the Municipal Budget Officer Vilmar V. Manaeg, to prove that contrary to the NDs, the expenditures were not included in the APP, and that there were funds for the Women's Day Celebration, Beri-Berian sa Barangay, Municipal Government Foundation Day and Provincial Government Foundation or Baragatan Festival. They furthered that the purchase orders submitted to them were included in the appropriation, were duly funded, and included in the APP for 2014 and the Revised APP for 2014.<sup>25</sup>

As to the appropriate mode of procurement, Avanceña et al. claimed that it was impractical and inappropriate to conduct regular bidding for these procurement activities since they only received the purchase orders for the supplies, items and/or merchandise with only a few days left before the scheduled activities.<sup>26</sup> In particular, for the Baragatan Festival, they alleged that they received the purchase orders only on June 11, 2014, four days before the scheduled activity.<sup>27</sup> As for the Women's Day Celebration, Avanceña et al. claimed that they received the purchase orders only on February 18, 2014, or 24 days before the scheduled celebration on March 14, 2014.<sup>28</sup> With respect to the 31<sup>st</sup> LGU Foundation Day, Avanceña et al. claimed that the BAC received the purchase orders on April 8, 2014, six days prior to its celebration on April 14-17, 2014.<sup>29</sup> Avanceña et al. maintained that it was impractical and inappropriate to use competitive public bidding as the minimum time required for it to be conducted efficiently was 28 days.

As to the Beri-Berian Program, a year-long celebration held every month in different barangays, Avanceña et al. insisted that they needed to

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<sup>22</sup> *Id.* at 10.

<sup>23</sup> *Id.* at 20.

<sup>24</sup> *Id.* at 290, Annex OO.


<sup>25</sup> *Id.* at 21.

<sup>26</sup> *Id.* at 22-23.

<sup>27</sup> *Id.* at 22.

<sup>28</sup> *Id.* 22-23.

<sup>29</sup> *Id.* at 23.



resort to an inexpensive mode of information dissemination by procuring tarpaulins. At that time, Barangays Canipaan and Latud were scheduled to hold their respective programs on May 14 to 15, 2014, and May 17, 2014. Avanceña et al. received the PRs on March 18, 2014. They argued that the tarpaulin request was not an off-the-shelf item, needed several days to procure, and had to be posted, at least, a month before the program. As such, they recommended Small Value Procurement as the appropriate mode of procurement.<sup>30</sup>

To bolster their claim, Avanceña et al. reasoned that all the purchase orders were less than PHP 100,000.00, well within the thresholds for Shopping and Small Value Procurement, and the requested supplies were not regular goods or used in day-to-day transactions. Thus, a resort to Shopping, as a mode of procurement, was inappropriate, and insisted that they had no choice but to procure through Small Value Procurement instead.<sup>31</sup>

Avanceña et al. also contended that, in accordance with paragraph 3(c) of the Government Procurement Policy Board Resolution No. 09-2009 dated November 23, 2009 which outlines the Guidelines for Shopping and Small Value Procurement, they were allowed to send the request for quotation to a single supplier if an unforeseen contingency necessitated immediate purchase. They believed that the unforeseen contingency was the lack of time to conduct a public bidding.<sup>32</sup> Therefore, they were justified in sending the request for quotation to only one supplier, rather than the required three.

Avanceña et al. likewise claimed that the Municipality suffered from very poor internet signal, making it impossible to visit the PhilGEPS site, despite their numerous attempts to post in said portal. They proffered the following documents to justify their claim:

1. A Certification<sup>33</sup> dated July 16, 2018 from Regielyn P. Quicson (**Quicson**), BAC Secretariat in-charge, of posting on PhilGEPS and the BAC Bulletin Board detailing that the requests for quotation of the [four] BAC Resolutions were posted in the BAC Bulletin Board for a period of [seven] calendar days, and that numerous attempts were made to post/publish the same in the PhilGEPS website but failed due to very poor internet access/connection in the locality, sometimes none at all.
2. A Certification<sup>34</sup> dated July 16, 2018 from Atty. Ryan T. Pacabis (**Pacabis**), the Municipal Administrator, that stated:

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 24.

<sup>32</sup> *Id.* at 24.

<sup>33</sup> *Id.* at 319. Annex UU.

<sup>34</sup> *Id.* at 320. Annex VV.



- a. Internet access or connection in the locality is poor, oftentimes none at all;
- b. Internet service provider has not yet effected upgrading of their respective facilities despite long and persistent request by concerned local officials and even demand from local users;
- c. This condition aggravated the problem on the posting requirements by national government agencies, specifically the posting on the PhilGEPS.<sup>35</sup>

As to the claim on splitting of contracts, Avanceña et al. asserted that: (1) they had no hand in the preparation of the purchase requests and other documents processed for the actual purchase of the items mentioned in the purchase requests; (2) all purchase requests submitted appeared to be sufficient in form and bore the approval of the HOPE or the Office of the Mayor; and (3) that the total amount of each purchase request did not exceed the PHP 100,000.00 threshold. As such, the procurement through Small Value Procurement, they claimed, was warranted.<sup>36</sup>

In their Comment,<sup>37</sup> the respondents COA and RD Gomez, through the Office of the Solicitor General (OSG), contended that Avanceña et al. failed to file a motion for reconsideration, rendering the Petition under Rule 64 fatally defective; the findings of fact by the COA are final and non-reviewable; and that the Petition failed to substantiate its imputation of grave abuse of discretion on the part of COA. The OSG likewise argued that Avanceña et al.'s resort to Small Value Procurement was unjustified, and as such, they may be held jointly and severally liable for the assailed Notices of Disallowance.<sup>38</sup>

### *The Issue*

Whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding Avanceña et al. liable for the Notices of Disallowance.

### *The Ruling of the Court*

The Petition is partly meritorious.

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 47.

<sup>37</sup> *Id.* at 332-358.

<sup>38</sup> *Id.* at 336.



*The Petition is procedurally flawed,  
but the Court decides to relax the  
strict adherence to procedural rules*

At the onset, it bears stressing that the office of a petition for *certiorari* is not to correct simple errors of judgment; any resort to said petition under Rule 64, in relation to Rule 65, of the Rules of Court is limited to the resolution of jurisdictional issues,<sup>39</sup> and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process. Accordingly, questions of facts, questions of law, or mixed questions of facts and law are not proper subjects of a petition under Rule 64.

Here, Avanceña et al. received the assailed Decision of the COA Commission Proper on November 5, 2020.<sup>40</sup> Without exhausting the remedy of a motion for reconsideration, Avanceña et al. proceeded with the filing of the Petition for *Certiorari* on December 7, 2020. For this reason alone, the Petition is fatally defective.

However, the Court resolves to relax the strict application of procedural rules to achieve the ends of justice.

Although a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*, the Court in *Republic v. Bayao et al.*,<sup>41</sup> citing a long line of cases,<sup>42</sup> recognized several exceptions to said rule:

Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) *where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court*; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no

<sup>39</sup> *Reyna v. Commission on Audit*, 657 Phil. 209, 225 (2011) [Per J. Peralta, *En Banc*].

<sup>40</sup> *Rollo*, p. 4.

<sup>41</sup> 710 Phil. 279 (2013) [Per J. Leonen, Third Division].

<sup>42</sup> *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124 (2010) [Per J. Peralta, Second Division]. See also *Republic v. Pantranco North Express et al.*, 682 Phil. 186 (2012) [Per J. Villarama, Jr, First Division]. See also *Domdom v. Sandiganbayan*, 627 Phil. 341 (2010) [Per J. Carpio-Morales, *En Banc*].

opportunity to object; and (i) where the issue raised is one purely of law or *where public interest is involved*.<sup>43</sup> (Emphasis supplied)

Here, the second and last exceptions apply. The issues surrounding Avanceña et al.'s liability, the propriety of the Small Value Procurement, and whether there was splitting of contracts, are not only clothed with public interest as they involve the expenditure of public funds; these issues have also been addressed by the COA Regional Office and Commission Proper, as mentioned.

The Court has time and again disregarded the presence of procedural flaws when there is necessity to address the issues because of the demands of public interest, including the need for stability in the public service and the serious implications the case may cause on the effective administration of the government.<sup>44</sup>

The present Petition involves issues related to the effective administration of local government units, the proper expenditure of public funds, and the adherence to procurement procedures. In the eyes of the Court, the resolution of these issues warrants the relaxation of procedural rules for the greater interest of justice.

*Palarca, Tolentino, De Guzman, Calamba, and Lobaton, with the exception of BAC Secretariat Avanceña, are accountable for their failure to adhere to the procurement procedures mandated by Republic Act No. 9184*

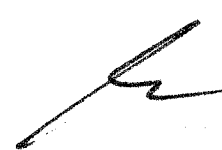
Avanceña et al. argue foremostly that “[t]he subject resolutions were issued pursuant to a Transmittal Letter with attached purchase requests (PRs) from different procurement agencies concerned, submitted to BAC for proper validation and determination of the appropriate procurement method. It is to be noted that only those items with attached [purchase requests] were evaluated and acted upon by [Avanceña et al.]”<sup>45</sup>

The records show that the reference documents considered by the COA were mainly gathered from journal entry vouchers connected with cash payments to various suppliers for the procurement of office supplies, construction materials, food supplies, sports uniforms, t-shirts with prints, *chaleco*, and tablecloths. These journal entry vouchers and their supporting

<sup>43</sup> *Republic v. Bayao*, 710 Phil. 279, 287 - 288 (2013) [Per J. Leonen, Third Division].

<sup>44</sup> *Id.* at 294.

<sup>45</sup> *Rollo*, p. 12.



documents reveal numerous payments anchored on the assailed BAC Resolutions, with the required attachments that were undated and not properly filled out, thereby defeating the purpose for which these were officially designed for stronger internal control.<sup>46</sup> Thus, the COA concluded that the application of liquidated damages, if any, could not be imposed on the suppliers due to the absence of pertinent data as provided in Item 3.1. of Annex D of the Revised IRR of Republic Act No. 9184.<sup>47</sup> The disallowed aggregate amount of these Notices of Disallowance are:

<b>Notice of Disallowance No. and Date</b>	<b>No. of Journal Entry Vouchers Covered</b>	<b>Payee</b>	<b>Aggregate Amount of all Journal Entry Vouchers (Net of Tax)</b>
ND No. 17-001-100-(14), dated January 11, 2017 <sup>48</sup>	21	NBL Smart Source Enterprise	PHP 1,816,083.35
ND No. 17-003-100-(14), dated January 11, 2017 <sup>49</sup>	16	EECC Store	PHP 1,407,460.80
ND No. 17-004-100-(14), dated January 11, 2017 <sup>50</sup>	3	EECC Store	PHP 280,430.40
ND No. 17-004-100-(14), dated January 11, 2017 <sup>51</sup>	11	EECC Store	PHP 994,968.00
ND No. 17-006-100-(14), dated January 11, 2017 <sup>52</sup>	22	One Source The Uniform	PHP 2,015,160.00
ND No. 17-007-100-(14), dated January 11, 2017 <sup>53</sup>	3	One Source The Uniform	PHP 281,880.00
ND No. 17-008-100-(14), dated January 11, 2017 <sup>54</sup>	12	Dulsora Trading	PHP 1,115,796.48
ND No. 17-011-100-(14), dated January 11, 2017 <sup>55</sup>	3	EECC Store	PHP 279,916.80
<b>TOTAL</b>	<b>91</b>		<b>PHP 8,191,695.83</b>

<sup>46</sup> *Id.* at 96, 99, 103, and 107.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 89-93.

<sup>49</sup> *Id.* at 94-97.

<sup>50</sup> *Id.* at 98-100.

<sup>51</sup> *Id.* at 101-104.

<sup>52</sup> *Id.* at 105-108.

<sup>53</sup> *Id.* at 109-112.

<sup>54</sup> *Id.* at 113-116.

<sup>55</sup> *Id.* at 117-120.

Common to all these findings is that the manner by which these goods and other items were procured violated provisions of Republic Act No. 9184 and its Revised IRR, i.e., referencing brand names, inappropriate resort to Small Value Procurement, and splitting of contracts. Avanceña et al.'s claim that they had no hand in the procurement activities in excess of PHP 1,131,925.04 is untenable, offering no substantial justification for such deviations in the procurement process.

Under Section 16 of COA Circular No. 2009-006, the liability for audit disallowances or charges are determined on the basis of a variety of factors, including the duties and responsibilities of the public officers or employees concerned and the extent of their participation in the disallowed transaction:

SECTION 16. DETERMINATION OF PERSONS  
RESPONSIBLE/LIABLE

16.1 *The [l]iability 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:*

16.1.1 Public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 *Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.*

16.1.4 Public officers and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.

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. (Emphasis supplied).

The quoted provision holds liable a broad range of public officials and employees who were involved in the disallowed public expenditure. This includes those responsible for managing government funds; those who verify the necessity, legality, and availability of funds; those who conspired to engage in a detrimental transaction; and those who carelessly approved or authorized expenditures that resulted in losses to the government.

Here, the BAC is the central body of the Municipality with respect to procurement.<sup>56</sup> According to Article V, Section 12 of Republic Act No. 9184, the BAC is tasked to perform a wide latitude of functions—from the holding of the pre-procurement conference up to the preparation of the monitoring report covering all procurement activities, until the issuance of the notice of and approval of the contract:<sup>57</sup>

SEC. 12. Functions of the BAC. – The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: *Provided*, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.


The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the [Government Procurement Policy Board] on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

Ultimately, and as pointed out by the COA Commission Proper, the BAC was responsible for ensuring that the procuring entity abided by the

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<sup>56</sup> *Id.* at 75.

<sup>57</sup> *Id.*





standards in Republic Act No. 9184 and its IRR.<sup>58</sup> However, as will be elaborated on below, Avanceña et al. failed to abide by their duties as members of the BAC.

In finding Avanceña et al. liable, the COA Regional Office cited several infractions and irregularities in the procurement process that fell under the purview of the BAC's responsibilities:

As aptly noted by the Appellees, *the supporting documents lacked the necessary data, e.g. date and reference nos.* Even upon perusal of the PRs attached by the Appellants in their appeal, the same were *undated, lacked the proper reference nos., and/or failed to specify the requesting department/office.* Additionally, the procuring entity failed to comply with the procedure for SVP under Item 3, Appendix 18 of the 2009 [Revised IRR] of [Republic Act.] No. 9184.

First, *no [Requests For Quotation(RFQ)] were prepared nor sent to at least three suppliers of known qualifications.* Second, *there was non-compliance with the posting requirement in the PhilGEPS website.* Neither did the Appellants present proof of the unforeseen contingency requiring the immediate purchase of the supplies as to allow the RFQ to be sent to only one supplier and the dispensing of the posting requirement thereof.

This Office also concurs with the Appellees in their observation that *the goods were ordinary or regular office supplies.* As such, the resort to [Small Value Procurement] is misplaced. Section 53.9, in relation to Section 52.1 of the 2009 [Revised IRR] of [Republic Act] No. 9184, explicitly provides that SVP may only be resorted to when the procurement does not fall under shopping. Corollary, shopping is availed of for the procurement of readily available off-the-shelf goods or ordinary/regular equipment.<sup>59</sup> (Emphasis supplied)

When Avanceña et al. elevated the matter to the COA Commission Proper, said office arrived at the same conclusions, holding Avanceña et al. liable.<sup>60</sup>

Further, it bears emphasizing that the language of the assailed BAC Resolutions were broad enough, that even considering Avanceña's argument that the assailed BAC Resolutions were based on specified purchase requests, they may still be held liable for the disallowed amount.

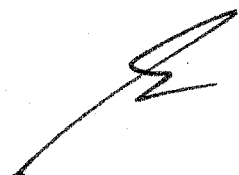
The assailed BAC Resolutions uniformly recommended to use Small Value Procurement in the procurement of unspecified "goods" related to the events mentioned, as follows:

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<sup>58</sup> *Id.* at 50.

<sup>59</sup> *Id.* at 75.

<sup>60</sup> *Id.* at 51.



## BAC Resolution No. 2014-01-03:

.....

RESOLVED AS IT IS [HE]REBY RESOLVED, TO RECOMMEND AS IT [IS] HEREBY RECOMMENDED, TO THE HEAD OF THE PROCURING ENTITY, HON. ALRIE D. NOBLEZA, TO USE "SMALL VALUE FOCUREMENT" (SVP) IN THE PROCUREMENT OF GOODS AND SERVICES INVOLVING AN AMOUNT NOT EXCEEDING THE THRESHOLD OF (100,000.00) IN CONNECTION WITH THE REQUIREMENTS OF THE OFFICE OF THE MUNICIPAL SOCIAL WELFARE AND DEVELOPMENT ON THE WOMEN'S DAY CELEBRATION FOR 2014.

.....<sup>61</sup>

## BAC Resolution No. 2014-01-04:

.....

RESOLVED AS IT IS [HE]REBY RESOLVED, TO RECOMMEND AS IT [HE]REBY RECOMMENDED, TO THE HEAD OF THE PROCURING ENTITY, HON. ALRIE D. NOBLEZA, USE "SMALL VALUE PROCUREMENT" (SVP) IN THE PROCUREMENT OF GOODS INVOLVING AN AMOUNT NOT EXCEEDING THE THRESHOLD OF (100,000.00) IN CONNECTION WITH THE REQUIREMENTS OF THE VARIOUS DEPARTMENTS OF THE MUNICIPAL GOVERNMENT OF RIZAL ON ITS BERI-BERIAN PROGRAM FOR 2014.

.....<sup>62</sup>

## BAC Resolution No. 2014-01-13:

.....

RESOLVED AS IT IS HEREBY RESOLVED, TO RECOMMEND AS IT IS HEREBY RECOMMENDED, TO THE HEAD OF THE PROCURING ENTITY, HON. ALRIE D. NOBLEZA, TO USE "SMALL VALUE PROCUREMENT" (SVP) IN THE PROCUREMENT OF GOODS INVOLVING AN AMOUNT NOT EXCEEDING THE THRESHOLD OF (100,000.00) IN CONNECTION WITH THE REQUIREMENTS OF THE VARIOUS COMMITTEES OF THE MUNICIPAL GOVERNMENT OF RIZAL ON ITS 31<sup>ST</sup> FOUNDING ANVERSARY CELEBRATION FOR 2014.

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<sup>61</sup> *Id.* at 121-122.

<sup>62</sup> *Id.* at 125-126.



....<sup>63</sup>

BAC Resolution No. 2014-04-34:

....

RESOLVED AS IT IS HEREBY RESOLVED, TO CHANGE THE MODE OF PROCUREMENT AS INDICATED IN THE APPROVED PROCUREMENT PLAN FOR CY 2014 FROM COMPETITIVE BIDDING TO SMALL VALUE PROCUREMENT IN THE PROCUREMENT OF GOODS IN CONNECTION WITH THE REQUIREMENTS OF THE MUNICIPAL GOVERNMENT OF RIZAL IN ITS PARTICIPATION TO BARAGATAN FESTIVAL 2014, PROVIDED IT DOES NOT EXCEED THE THRESHOLD OF (100,000.00).

....<sup>64</sup>

As mentioned, Avanceña et al. argues that “[t]he subject resolutions were issued pursuant to a Transmittal Letter with attached [purchase requests] from different procurement agencies concerned, submitted to the BAC for proper validation and determination of the appropriate procurement method. It is to be noted that only those items with attached [purchase requests] were evaluated and acted upon by [Avanceña et al.]”<sup>65</sup> However, the evidence provided by Avanceña et al. shows that the BAC continued to process purchase requests which were dated after issuance of the BAC Resolutions.

For one, despite BAC Resolution No. 2014-01-04 on the Beri-Berian Program being issued on February 18, 2014, the BAC still processed several purchase requests dated after said resolution’s issuance for the same program:

Date of Purchase Request	Amount
March 4, 2014	PHP 44, 124.60
March 4, 2014	PHP 49,999.60
March 4, 2014	PHP 43, 924.60
March 4, 2014	PHP 49,999.60
March 4, 2014	PHP 29,997.44
March 18, 2024	PHP 110,000.00
April 29, 2024	PHP 43, 874.60
April 29, 2024	PHP 49, 990.60
May 26, 2024	PHP 44, 124.60

<sup>63</sup> *Id.* at 127–128.

<sup>64</sup> *Id.* at 123–124.

<sup>65</sup> *Id.* at 12.

May 26, 2024	PHP 49,999.60
October 9, 2014	PHP 43, 614.60
October 9, 2014	PHP 49,999.60
October 9, 2014	PHP 43, 614.60 <sup>66</sup>

The processing of these purchase requests proves the BAC's participation in the procurement beyond their issuance of the assailed BAC Resolutions. Said participation could be attributed, in part, to the broad and uniform wording of the assailed BAC Resolutions which enabled their repeated use to cover multiple transactions, ultimately totaling PHP 8,191,695.83.

To emphasize, the assailed BAC Resolutions did not specify any particular purchase requests being approved. Instead, they were issued to facilitate the acquisition of unspecified "goods" for various events, including the Women's Day Celebration, Beri-Berian Program, the Municipality's 31<sup>st</sup> Founding Anniversary Celebration, and the Baragatan Festival. Clearly, the purpose of the assailed BAC Resolutions was to grant blanket authority to purchase unnamed and unspecified "goods" effectively skirting the procurement procedures mandated by Republic Act No. 9184.

These notwithstanding, the Court takes cognizance of its ruling in *PNP-CIDG v. Villafuerte*,<sup>67</sup> where the Court absolved the BAC Secretariat from any liability considering that their functions are purely administrative and ministerial in nature, as they primarily provide administrative support to the BAC:

*In fact, the nature of the functions of the BAC Secretariat under the Amended IRR-A of [Republic Act No.] 9184 confirms that respondent Villafuerte does not possess recommendatory authority of any kind:*

**Section 14. BAC Secretariat. —**

*14.1. The head of the procuring entity shall create a Secretariat which will serve as the main support unit of the BAC. . . . The Secretariat shall have the following functions and responsibilities:*

- 1. Provide administrative support to the BAC;*
- 2. Organize and make all necessary arrangements for the BAC meetings;*
- 3. Attend BAC meetings as Secretary;*
- 4. Prepare Minutes of the BAC meetings;*

<sup>66</sup> *Id.* at 136–148. See Annex "M" to "T" of the Petition.

<sup>67</sup> See 840 Phil. 243 (2018) [Per J. Caguioa, En Banc].

5. *Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;*
6. *Assist in managing the procurement processes;*
7. *Monitor procurement activities and milestones for proper reporting to relevant agencies when required;*
8. *Consolidate PPMPs from various units of the procuring entity to make them available for review as indicated in Section 7 of this IRR-A;*
9. *Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and*
10. *Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public.*

...<sup>68</sup>(Citations omitted and emphasis supplied)

Although Avanceña does not invoke his position as the BAC Secretariat to avoid liability, the Court finds it proper to apply *Villafuerte* and absolve Avanceña. Similar to the BAC Secretariat in *Villafuerte*, Avanceña's role was limited to performing the specific functions quoted earlier. Beyond certifying the correctness of the assailed BAC Resolutions, there is no indication that Avanceña himself participated in the discussion, approval, or implementation of the assailed BAC Resolutions, as he was not a voting member of the BAC.

As such, the Court affirms the COA findings that Palarca, Tolentino, De Guzman, Calamba, and Lobaton (**Palarca et al.**) are liable with the other municipal officers for their patent disregard of mandatory procurement procedures, as well as the payees for the disallowed amounts.

*Palarca, Tolentino, De Guzman,  
Calamba, and Lobaton failed to justify  
their recommendation to resort to  
Small Value Procurement*

Palarca et al.'s exhortations that they were pressed for time to justify Small Value Procurement do not persuade. Article 4, Section 10 of Republic Act No. 9184<sup>69</sup> provides that the default procurement method is through competitive bidding. Further, Rule XVI, Section 48.2 of the Revised IRR of

<sup>68</sup> *Id.* at 256–257.

<sup>69</sup> Government Procurement Reform Act (2002), states:  
SEC. 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.



Republic Act No. 9184 enjoins all procurement entities to allow sufficient lead time for competitive bidding:

RULE XVI – ALTERNATIVE METHODS OF PROCUREMENT

Sec. 48. Alternative Methods

....

48.2. In accordance with Section 10 of this IRR, as a general rule, the Procuring Entities shall adopt public bidding as the general mode of procurement and shall see to it that the procurement program allows sufficient lead time for such public bidding. Alternative methods shall be resorted to only in the highly exceptional cases provided for in this Rule.

Rule XVI, Section 48.3 of the Revised IRR of Republic Act No. 9184, in turn provides that a procuring entity may resort to alternative methods of procurement, subject to the prior approval of the head of the procuring entity or their duly authorized representative, and whenever justified by the conditions provided in the law:

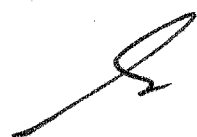
48.3. The method of procurement to be used shall be as indicated in the approved APP. *If the original mode of procurement recommended in the APP was public bidding but cannot be ultimately pursued, the BAC, through a resolution, shall justify and recommend the change in the mode of procurement to be approved by the Head of the procuring entity.* (Emphasis supplied)

That the BAC received the purchase requests with only a few days remaining before the scheduled activity is not a highly exceptional circumstance to justify the alternative mode of Small Value Procurement. As correctly held by the COA Commission Proper, the festivities subject of the BAC Resolutions are annual programs of the Municipality and, as such, were predictable and foreseen, and the Municipality had ample time to plan and prepare the budget:

The argument that the municipality was time constrained and thus resorted to SVP is not tenable. Time constraint should never be made as a basis to forego public bidding. The alternative modes of procurement can only be resorted to in certain circumstances and for compelling reasons in order to promote economy and efficiency, pursuant to Section 48, [Republic Act.] No. 9184. In this case, the municipality had ample time to plan and prepare the budget for the festivals and programs subject of the BAC resolutions, considering that the said festivals were celebrated regularly by the municipality.<sup>70</sup>

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<sup>70</sup> Rollo, p. 50.




Even granting that Palarca et al. were constrained to resort to Small Value Procurement, they failed to comply with its requirements. Under the Revised IRR of Republic Act No. 9184, Small Value Procurement is sanctioned when Shopping, as a mode of procurement, is not feasible and when it does not exceed the prescribed thresholds, in this case, PHP 100,000.00 for first-level municipalities. In Government Procurement Policy Board Resolution No. 09-2009, the guidelines on Small Value Procurement were laid down, as follows:

### 3. PROCEDURAL GUIDELINES

- a. The Request for Quotation (RFQ), indicating the specification, quantity, Approved Budget for the Contract (ABC), and other terms and conditions of the item to be procured, shall be prepared;
  - b. The RFQ must also prescribe the manner by which price quotations shall be submitted[,] i.e., by sealed or open quotation, and the deadline for their submission. In all instances, however, information relating to the examination, evaluation, and comparison of price quotations shall be kept confidential and should not be disclosed to any other party except to those officially concerned until award of contract.
  - c. The RFQ shall be sent to at least three (3) suppliers, contractors, or consultants of known qualifications. *However, during the unforeseen contingencies requiring immediate purchase under Section 52.1(a) of the IRR, the RFQ may be sent to only one (1) supplier.*
  - d. RFQs shall also be posted for a period of seven (7) calendar days in the [PhilGEPS] website, website of procuring entity, if available, and at any conspicuous place reserved for the purpose in the premises of the procuring entity. *However, in the following instances, this posting requirement shall not be applicable:*
    - i. *When there is an unforeseen contingency requiring immediate purchase under Section 52.1(a)<sup>71</sup> of the IRR; or*
    - ii. RFQs with ABCs equal to [PHP 50,000.00] and below;
- .....
- i. For information purposes, all awards shall be posted in the PhilGEPS website, website of the procuring entity, if available, and at any conspicuous place reserved for this purpose in the premises of the procuring entity except for those with ABCs equal to [PHP 50,000.00] and below. (Emphasis supplied)

<sup>71</sup> Sec. 52.1. Shopping is a method of procurement of goods whereby the procuring entity simply request for the submission of price quotations for readily available off-the-shelf goods or ordinary/regular equipment to be procured directly from suppliers of known qualifications. This method of procurement shall be employed in any of the following cases:

- a) When there is an unforeseen contingency requiring immediate purchase: Provided, however, That the amount shall not exceed the thresholds prescribed in Annex "H" of this IRR.
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Records show that while Palarca et al. resorted to the abovementioned emphasized exceptions, poor internet signal and time constraints fail to justify a deviation from the requirements. Moreover, the Court cannot sustain the assertion that the Municipality failed to subscribe to the posting requirements in the PhilGEPS website due to weak internet signal from 2014 when the procurement activity was executed, until 2018 when Palarca et al. secured the certifications from Quicson and Pacabis.

The Court reiterates that the guidelines in government procurement are in place to ensure that government's interest will be best served. Small Value Procurement grants a procuring entity a method to implement a project or contract within a short period of time by doing away with the tedious requirements of competitive bidding. However, resorting to this mode is not *carte blanche* to forego compliance with government procurement guidelines as an excuse for poor project planning. At the pain of being repetitive, the BAC is duty-bound to safeguard the interest of the government by ensuring that the procuring entity abides by the procurement laws. Mere expediency in procurement is not a justification for a resort to Small Value Procurement as an alternative mode of procurement.

As observed by the Regional Office and the COA Commission Proper, the supporting documents disclose that while the individual separate procurements were within the threshold of PHP 100,000.00, the Municipality, made several and repeated procurements of the same supplies for the same purpose, and from the same supplier, that amounted to more than the allowable threshold for Small Value Procurement .

In the same vein, the Court rejects Palarca et al.'s argument that time constraints or lack of time warranted dispensing with the requirements for Small Value Procurement:

53. It cannot be gain said that time constraint is not an excuse to conduct regular bidding.

54. With all due respect to the Honorable Respondent Commission, regular bidding is time consuming. The posting requirements, pre-qualification evaluation of bidders, the bidding itself, posting of notice of winning bidders, post-qualification evaluation and other processes needs at least 28 days to accomplish the same. This has been the practice of respondents to determine that there was full compliance with procedure of competitive bidding.

55. If petitioners are to follow this procedure, there will be no supplies to be used in the above-mentioned programs since the bidding will not be finished by the time these programs/festivities will be held. It will be a useless effort.<sup>72</sup>

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<sup>72</sup> Rollo, p. 24.





....

*“c. the [Request for Quotation] shall be sent to at least [three] suppliers, contractors, or consultants of known qualification. However, during **unforeseen contingencies requiring immediate purchase** under Section 52.1 (a) of the IRR, the [Request for Quotation] may be sent to only [one] supplier.”*

There is urgency in the subject procurements which may warrant sending of [Request for Quotation] to only [one] qualified supplier as earlier alleged.

The unforeseen contingency dispensing the requirement of sending [Requests for Quotation] to [three] suppliers is the evidently the LACK OF TIME to resort to competitive bidding as discussed in the preceding paragraphs.<sup>73</sup> (Emphasis supplied)

....

67. The findings of the Honorable Commission that [Small Value Procurement] was not justified considering that the municipality appears to have several and repeated procurements of the same supplies for the same supplies for the same purpose and from the same supplier and that the defense of time-constraint should never be a basis to forego public bidding has no factual and legal basis.

68. It is quite unacceptable for respondent Commission to rule that time constraint should never be a basis to forego public bidding.<sup>74</sup>

The Court cannot subscribe to this whimsical reasoning. It must be emphasized that the governing principles on government procurement under Republic Act No. 9184 are transparency, competitiveness, streamlining, accountability, and public monitoring in the procurement process of government transactions, with the end view of promoting the best interest of the government. Thus, it was incumbent upon Palarca et al. and all government employees to uphold these principles in safeguarding the interest of their agency.

As explained, Article V, Section 12 of RA No. 9184 provides that the BAC shall be responsible for ensuring that the procuring entity complies with the provisions of the statute and the relevant rules and regulations. This is echoed in Section 12 of its IRR-A. For this reason, the functions of Palarca et al., as BAC members, are not merely ceremonial, but they are also tasked to safeguard the mandate of the government procurement law to ensure that the government and the public acquire the most advantageous goods, services, and infrastructure. Their insistence that it was inappropriate and impractical is untenable.

As correctly pointed out by the COA Commission Proper, “[t]he [M]unicipality had ample time to plan and prepare the budget for the festivals

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<sup>73</sup> *Id.* at 26.

<sup>74</sup> *Id.* at 30.



and programs subject of the BAC resolutions, considering that said festivals were being celebrated regularly by the [M]unicipality.”<sup>75</sup> One would expect that the Municipality would prepare for these annual and activities as these are included in their APP. To condone the excuse of lack of time would be opening the floodgates to irregular procurement, to the prejudice of the government.

*There is prima facie evidence that the BAC committed splitting of contracts*

Under General Guideline 2.b. of the Government Procurement Policy Board Resolution No. 09-2009,<sup>76</sup> splitting of contracts is the breaking up of contracts into smaller quantities and amounts, or dividing contract implementation into artificial phases or subcontracts, for the purpose of making it fall below the threshold for Shopping or Small Value Procurement, or evading or circumventing the requirement of public bidding. It is strictly prohibited.

Here, as observed by the COA Regional Office, the repeated procurement of the same supplies, for the same purpose, from the same supplier served as *prima facie* evidence of splitting of government contracts:

Lastly, a cursory review of the [Journal Entry Vouchers] and their supporting documents would disclose that each of the procurement [sic] had gross amounts less than [PHP] 100,000.00, which was the threshold for [Small Value Procurement] of 1<sup>st</sup>-class municipalities pursuant to Item 2(b), Annex H of the 2009 [Revised IRR] of [Republic Act No.] 9184. It was also observed that there were repeated procurement of the same supplies, for the same purpose, from the same supplier, and the total amount of each procurement did not exceed [PHP] 100,000.00—for example, the procurement of rice, maggi chicken, maggi beef, and sardines for Beri-Berian sa Barangay from ECC Store. Only the quantities of each item differed, but essentially, the same items were procured for the same purpose, from the same supplier, and the total amount of each instance of procurement was within the [PHP] 100,000.00 threshold.

Under COA Circular No. 1976-041[,] dated July 30, 1976, splitting, in its literal sense, is dividing or breaking up into separate parts or portions. In procurement, it is associated with requisitions, purchase orders, deliveries and payments. In addition, the same Circular provides that there may be splitting of requisitions by the non-consolidation of requisitions for one or more items needed at or about the same time. Applied in the herein case, this Office concurs with the Appellees that the repeated procurement of supplies for the same purpose and from the same supplier is *prima facie* evidence of splitting of government contracts to circumvent the requirement of public bidding.<sup>77</sup>

<sup>75</sup> *Id.* at 50.

<sup>76</sup> Government Procurement Policy Board Resolution No. 09-2009 (2009). Guidelines for Shopping and Small Value Procurement.

<sup>77</sup> *Rollo*, pp. 75–76.



In *Re: Contracts with Artes International, Inc.*,<sup>78</sup> the Court held that the following elements constitute the act of splitting of contract in procurement projects:

1. That there is a government contract or procurement project;
2. That the requisitions, purchase orders, vouchers, and the like, of the project are broken up into smaller quantities and amounts, or the implementation thereof is broken into subcontracts or artificial phases; and
3. That the splitting of contract falls under any of the following or similar purposes, namely:
  - a. evading the conduct of a competitive bidding;
  - b. circumventing the control measures provided in the circulars and other laws and regulations; and
  - c. making the contract or project fall below the threshold for shopping or [Small Value Procurement].<sup>79</sup>

Applying the foregoing, it is clear from the COA findings that the Municipality, through Palarca et al., made several government procurements in amounts below the allowable threshold to evade the conduct of competitive bidding:

In Notice of Disallowance No. 17-001-100-(14),<sup>80</sup> the Municipality made 21 separate disbursements with 21 different amounts for the same supplier NBL Smart Source Enterprise, below the threshold for Small Value Procurement;

In Notice of Disallowance No. 17-003-100-(14),<sup>81</sup> the Municipality made 16 separate disbursements with 16 different amounts for the same supplier EECC Store, below the threshold for Small Value Procurement;

In Notice of Disallowance No. 17-004-100-(14),<sup>82</sup> the Municipality made three separate disbursements with three different amounts for the same supplier EECC Store, below the threshold for Small Value Procurement;

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<sup>78</sup> 838 Phil. 355 (2018) [Per J. Bersamin, *En Banc*].

<sup>79</sup> *Id.* at 406-407.

<sup>80</sup> *Rollo*, pp. 89-93.

<sup>81</sup> *Id.* at 94-97.

<sup>82</sup> *Id.* at 98-100.



In Notice of Disallowance No. 17-005-100-(14),<sup>83</sup> the Municipality made 11 separate disbursements with 11 different amounts for the same supplier EECC Store, below the threshold for Small Value Procurement;

In Notice of Disallowance No. 17-006-100-(14),<sup>84</sup> the Municipality made 22 separate disbursements with 22 different amounts for the same supplier One Source The Uniform, below the threshold for Small Value Procurement;

In Notice of Disallowance No. 17-007-100-(14),<sup>85</sup> the Municipality made three separate disbursements with three different amounts for the same supplier One Source The Uniform, below the threshold for Small Value Procurement;

In Notice of Disallowance No. 17-008-100-(14),<sup>86</sup> the Municipality made 12 separate disbursements with 12 different amounts for the same supplier Dulsora Trading, below the threshold for Small Value Procurement; and

In Notice of Disallowance No. 17-011-100-(14),<sup>87</sup> the Municipality made three (3) separate disbursements with three (3) different amounts for the same supplier EECC Store, below the threshold for Small Value Procurement.

As it appears, several obligation requests and disbursement vouchers in amounts below PHP 100,000.00, the threshold amount for Small Value Procurement, and traced through the journal entry vouchers established the fact that the requisitions or purchases by the Municipality was broken into smaller quantities and amounts, or was done in artificial phases, to purposely evade the conduct of competitive bidding. These pieces of documents collectively brought attention to the illegal disbursements born out of the four BAC Resolutions. There was thus *prima facie* proof of splitting of government of contracts.

*Palarca, Tolentino, De Guzman, Calamba, and Lobaton, as members of the BAC, are solidarily liable for the disallowed amount*

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<sup>83</sup> *Id.* at 101–104.

<sup>84</sup> *Id.* at 105–108.

<sup>85</sup> *Id.* at 109–112.

<sup>86</sup> *Id.* at 113–116.

<sup>87</sup> *Id.* at 117–120.



In *Patadon v. COA*,<sup>88</sup> the Court reiterated the duties of approving officers under the Manual on the New Government Accounting System (**Manual Version**) for Use in All National Government Agencies,<sup>89</sup> specifically, that all approving officers must discharge their duties pertinent to the disbursement process with the diligence of a good father of the family:

The basic rule is that all approving officers must discharge their duties pertinent to the disbursement process with the diligence of a good father of the family. In connection with the disbursement of government funds, all those exercising authority shall share fiscal responsibility over the financial affairs, transactions, and operations of the government agency, which includes ensuring that all disbursements are legal and in conformity with laws, rules, and regulations.

Thus, before any approving official affixes his signature on the document, he is expected to perform basic verification procedures to inquire into the legality and regularity of the transaction, independent from those done by other lower-ranking approving officials. For instance, if it shall become apparent on the face of the document that the transaction violates prevailing laws and regulations or that the document under review lacks key supporting documents, a prudent official is expected to withhold his approval. To be sure, he cannot rely completely on existing approvals or certifications. Otherwise, his function would be reduced to mere rubber stamping.<sup>90</sup>

Public officers are presumed to have performed their duties regularly and in good faith.<sup>91</sup> However, as pronounced in *Madera et al. v. COA*,<sup>92</sup> they shall be liable in case of a disallowance only when their participation in the transaction is attended by negligence, bad faith, or malice. Further, in *Estrella v. COA*,<sup>93</sup> the Court held that the liability of approving or certifying officers in procurement disallowances is primarily civil in nature, grounded upon the principles of *solutio indebiti* and unjust enrichment.

Here, the Court is not persuaded that Palarca et al. had performed their duties with utmost diligence that would establish their good faith or that would afford them the presumption of regularity in the performance of their functions. The Court observes several badges of bad faith in the subject procurement transactions: (a) Palarca et al. failed to justify the resort to Small Value Procurement; (b) there was splitting of government contracts to evade competitive public bidding; (c) and Palarca et al. deliberately failed to observe the guidelines and procedures under Republic Act No. 9184 and its Revised IRR. These badges of bad faith support the COA findings that Palarca et al.

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<sup>88</sup> G.R. 218347, March 15, 2022 [Per J. Inting, *En Banc*].

<sup>89</sup> As prescribed in COA Circular 2002-002, dated June 18, 2002.

<sup>90</sup> *Patadon v. COA*, G.R. 218347, March 15, 2022 [Per J. Inting, *En Banc*].

<sup>91</sup> *National Transmission Corp. v. Commission on Audit*, 891 Phil. 107, 124 (2020) [Per J. Inting, *En Banc*].

<sup>92</sup> See 882 Phil. 744 (2020) [Per J. Caguioa, *En Banc*].

<sup>93</sup> G.R. No. 252079, September 14, 2021. [Per J. M. Lopez, *En Banc*].



are liable for the assailed disallowed amounts, pursuant to Book VI, Chapter 5, Section 43 of the Administrative Code:

SEC. 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 of the full amount so paid or received.*<sup>94</sup> (Emphasis supplied)

To recall, Palarca et al. were the BAC members who took part in the illegal expenditures found by COA when they failed to comply with the posting requirements and procedures in accordance with Republic Act No. 9184 and its Revised IRR. The COA Regional Office and Commission Proper concluded that to sustain the claim that they were unaware of the disallowed transactions would be in clear contravention of their mandate as BAC members to ensure that the procuring entity abides by the procurement laws, rules and regulations.<sup>95</sup> The COA Regional Office explained in this wise:

Even assuming, without conceding, that the Appellants are only aware of the procurement of various supplies for the various festivities of the Municipal Government for CY 2014, the Office still cannot sustain their exclusion from liability. As held in COA Decision No. 2016-180[,] dated July 19, 2016, *the patent disregard of the procurement law, rules and regulations overcomes the presumption of good faith.* The herein case involves patent disregard of proper procurement procedures.

*As previously noted, the [Purchase Requests] attached in the present appeal were undated, lacked the proper reference nos., and/or failed to specify the requesting department/office. Appellants' allegation that it was upon these PRs that the afore-stated resolutions were based is a clear admission of negligence.*

It was likewise previously noted that *no [Requests for Quotation] were prepared nor sent to at least three suppliers of known qualifications. Further, there was non-compliance with the posting requirements in the PhilGEPS website.* There was also no proof of the unforeseen contingency requiring the immediate purchase of the supplies as to allow the [Request for Quotation] to be sent to only one supplier and the dispensing of the posting requirement thereof. Generally, the proper procedure for [Small Value Procurement] was not followed.

....

Verily, the absence of the corresponding proper entries in these forms would put any reasonable and prudent official on guard. . . . *[W]hen the [Purchase Requests] were presented to the Appellants for the enactment of the corresponding resolutions, prudence thus dictates that they should*

<sup>94</sup> Rollo, p. 78.

<sup>95</sup> *Id.* at 76.

*have at least requested that these [Purchase Requests] should be properly filled up before proceeding to enact the resolutions[.]*

Nonetheless, this Office is of the opinion that the role of the Appellants as BAC members does not end with the passage of the said resolutions. *In order to ensure that the procuring entity had indeed complied with the proper procurement procedures, Section 12.2 of the 2009 [Revised IRR] of [Republic Act] No. 9184 requires the BAC to prepare a procurement monitoring report covering all the procurement activities specified in the Annual Procurement Plan (APP), whether ongoing and completed.* However, in this case, the Appellants could have, at the very least, monitored the procurement activities of the Municipal Government after the passage of the resolutions.<sup>96</sup> (Emphasis supplied)

The Court agrees.

Palarca et al.'s argument that the COA Commission Proper totally ignored their arguments that the BAC Resolutions never recommended purchase through Small Value Procurement for a certain number of expenditures included in the Notices of Disallowance is of no moment. The COA Regional Office had already addressed this. Again, the BAC is duty-bound to safeguard the interest of the government by ensuring that the procuring entity abides by the procurement laws. This responsibility is not just within the rudiments of the procurement process, but also includes monitoring all procurement activities. Section 12.2 of the 2009 Revised IRR of RA No. 9184 provides:

SEC. 12.2. The BAC shall be responsible for ensuring that the procuring entity abides by the standards set forth by the Act and this IRR, and it shall prepare a procurement monitoring report in the form prescribed by the [Government Procurement Policy Board]. The procurement monitoring report shall cover all procurement activities specified in the APP, whether ongoing and completed, from the holding of the pre-procurement conference to the issuance of notice of award and the approval of the contract, including the standard and actual time for each major procurement activity. The procurement monitoring report shall be approved and submitted by the Head of the Procuring Entity to the [Government Procurement Policy Board] in printed and electronic format within [14] calendar days after the end of each semester.

Further, as mentioned, Section 16 of COA Circular No. 2009-006 provides four bases to determine the liabilities of public officers and other persons for audit disallowances: (a) nature of the disallowance; (b) duties and responsibilities or obligations of the said officers/employees; (c) extent of participation in the disallowed transaction; and (d) amount of damage or loss to the government.<sup>97</sup> Here, Palarca et al. failed to observe the correct procurement procedures, resulting in numerous disallowed transactions,

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<sup>96</sup> *Id.* at 77-78.

<sup>97</sup> COA Circular No. 2009-006 (2009), sec. 16.



exhibiting their poor planning skills. Undoubtedly, they are solidarily liable with the other municipal officers, as well as the recipients, for the assailed procurement disallowances.

The Court now deems it proper to order the return of these amounts following the guidelines laid down in *Torreta v. COA*<sup>98</sup> and echoed in *Bodo v. COA*,<sup>99</sup> as:

The solidary liability of government officials who approved or took part in the illegal expenditure of public funds, pursuant to Section 43 of Book VI of the 1987 Administrative Code, does not necessarily equate to the total amount of the expenditure. In *Torreta v. COA*, we held that should the disallowed expenditure consist of payments arising from irregular or unlawful government contracts—such as the case here—the solidary liability of the aforesaid officials *may* be reduced based on the principle of *quantum meruit*. Thus:

....

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any 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 the 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. *Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.*

- c. *The civil liability for the disallowed amount may be reduced by the amounts due the recipient based on the application of the principle of quantum meruit on a case to case basis.*

- d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.<sup>100</sup> (Emphasis supplied; citations omitted)

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<sup>98</sup> 889 Phil. 1119 (2020) [Per J. Gaerlan, *En Banc*].

<sup>99</sup> G.R. No. 228607, October 5, 2021. [Per J. Rosario, *En Banc*].

<sup>100</sup> *Id.*





The principle of *quantum meruit* is predicated on equity and acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.<sup>101</sup> In *Bodo*, the Court applied *quantum meruit* to reduce the liability of local government officials who were held solidarily liable in the disallowed expenditure consisting of payments arising from irregular or unlawful contracts. Similarly, the Court finds the same principle applicable to reduce the civil liability of Palarca et al. against the payees of these illegal expenditures, and of the other officers identified in the Notices of Disallowance, including the BAC Chairman against whom the COA Commission Proper directed further investigation. The determination of their liabilities is one that the COA is technically equipped to undertake.

As a final note, Palarca et al. are reminded that they are officials and employees of the Government tasked to protect its interest. As custodians of government funds, it is their sworn duty to ensure that such funds are safely guarded against loss or damage and that they are expended, utilized, disposed of, or transferred in accordance with laws and regulations and on the basis of prescribed documents and necessary records.<sup>102</sup>

**ACCORDINGLY**, the Petition is **GRANTED IN PART**. The Commission on Audit Decision No. 2020-341 dated January 31, 2020 is **AFFIRMED** with the following **MODIFICATIONS**:

1. Petitioner Nelson R. Avanceña, the Bids and Awards Committee Secretariat, is **ABSOLVED** from any liability; and
2. The pronouncement including the amount of the civil liability in Notices of Disallowance Nos. 17-001-100(14), 17-003-100-(14) to 17-008-100-(14) and 17-011-100-(14), all dated January 11, 2017, amounting to PHP 8,191,695.83, is **VACATED**.

The case is **REMANDED** to the Commission on Audit for the computation of the amounts to be returned by Henry V. Palarca, Nida B. Tolentino, Teodora M. De Guzman, Jerry V. Calamba, and Rodel B. Lobaton, with dispatch and in accordance with the Court's pronouncements.

**SO ORDERED.**

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<sup>101</sup> *Id.*

<sup>102</sup> *Menzon v. Commission on Audit*, 892 PR. 336 (2020) [Per J. Gaerlan, *En Banc*].





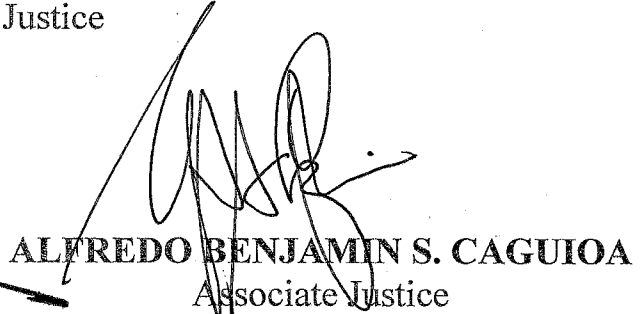
**MARIA FILOMENA D. SINGH**  
Associate Justice

WE CONCUR:

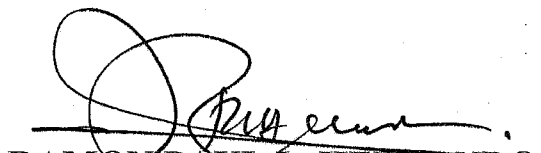
(On Official Leave)  
**ALEXANDER G. GISMUNDO**  
Chief Justice



**MARVIC M.V.F. LEONEN**  
Acting Chief Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

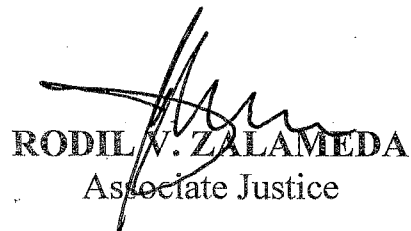


**RAMON PAUL L. HERNANDO**  
Associate Justice

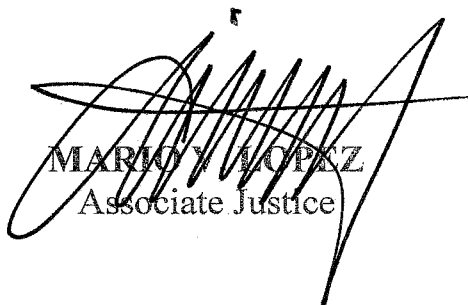
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left covering role*

(On Official Business)  
**AMY C. LAZARO-JAVIER**  
Associate Justice

(On Official Business)  
**HENRI JEAN PAUL B. INTING**  
Associate Justice



**RODIL V. ZALAMEDA**  
Associate Justice



**MARIO Y. LOPEZ**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

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~~RICARDO R. ROSARIO~~  
Associate Justice

(On Official Business)  
**JHOSEP Y. LOPEZ**  
Associate Justice

~~JAPAR B. DIMAAMPAO~~  
Associate Justice

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

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

**CERTIFICATION**

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

*M.F. Leonen*  
**MARVIC M.V.F LEONEN**  
Acting Chief Justice

*[Handwritten mark]*