



Republic of the Philippines
Supreme Court
Manila City

FIRST DIVISION

FILM DEVELOPMENT COUNCIL
OF THE PHILIPPINES,

Petitioner,

- versus -

SM PRIME HOLDINGS, INC.,
Respondent.

G.R. No. 197937

Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

Promulgated:

APR 03 2013

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DECISION

VILLARAMA, JR., J.:

Petitioner appeals the Orders¹ dated February 21, 2011 and July 25, 2011 of the Regional Trial Court (RTC) of Pasig City, Branch 166 which granted respondent's motion to dismiss on the ground of *litis pendentia*.

The factual antecedents:

Respondent SM Prime Holdings, Inc. is the owner and operator of cinema houses at SM Cebu in Cebu City. Under Republic Act (R.A.) No. 7160 otherwise known as the Local Government Code of 1991, owners, proprietors and lessees of theaters and cinema houses are subject to amusement tax as provided in Section 140, Book II, Title One, which reads:

SECTION 140. *Amusement Tax* --

(a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls,

¹ Rollo, pp. 32-42. Penned by Presiding Judge Rowena De Juan-Quinagoran.

circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

X X X X

(d) The *sangguniang panlalawigan* may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the *sangguniang panlalawigan* may impose such surcharges, interest and penalties as it may deem appropriate.

On June 21, 1993, the *Sangguniang Panglunsod* of Cebu City approved City Tax Ordinance No. LXIX² pursuant to Section 140, in relation to Section 151³ of the Local Government Code of 1991. Chapter XI of said ordinance provides:

CHAPTER XI

Amusement Tax

SECTION 42. *Rate of Tax.* – There shall be paid to the Office of the City Treasurer by the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia and other places of amusement an amusement tax at the rate of thirty percent (30%) of the gross receipts from admission fees.

SECTION 43. *Manner of Payment.* – In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessee, or operators and paid to the city treasurer before the gross receipts are divided between said proprietors, lessee, operators and the distributors of the cinematographic films.

X X X X

SECTION 45. *Time of Payment.* – The tax shall be due and payable within the first twenty (20) days of the succeeding month.

On June 7, 2002, Congress approved R.A. No. 9167⁴ which created the Film Development Council of the Philippines, herein petitioner. Petitioner's mandate includes the development and implementation of "an incentive and

² AN ORDINANCE REVISING THE CITY TAX ORDINANCE NO. 1, OTHERWISE KNOWN AS 'THE OMNIBUS TAX ORDINANCE OF THE CITY OF CEBU' AS AMENDED. *Rollo*, pp. 136-213.

³ Art. III (Cities)

Section 151. *Scope of Taxing Powers.* -- Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: *Provided, however,* That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

⁴ AN ACT CREATING THE FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

reward system for the producers based on merit to encourage the production of quality films.”⁵ The Cinema Evaluation Board (CEB) was established to review and grade films in accordance with criteria and standards and procedures it shall formulate subject to the approval of petitioner.

Films reviewed and graded favorably by the CEB are given the following privileges:

Section 13. *Privileges of Graded Films.* - Films which have obtained an “A” or “B” grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:

a. Amusement tax reward. - A grade “A” or “B” film shall entitle its producer to an incentive equivalent to the amusement tax imposed and collected on the graded films by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 and 151 of Republic Act No. 7160 at the following rates:

1. For grade “A” films - 100% of the amusement tax collected on such films; and

2. For grade “B” films. - 65% of the amusement tax collected on such films. The remaining thirty-five (35%) shall accrue to the funds of the Council.

For the purpose of implementing the above incentive system, R.A. No. 9167 mandates the remittance of the proceeds of the amusement tax collected by the local government units (LGUs) to petitioner.

Section 14. *Amusement Tax Deduction and Remittances.* - All revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act. No. 7160 during the period the graded film is exhibited, shall be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and **remitted within thirty (30) days from the termination of the exhibition to the Council which shall reward the corresponding amusement tax to the producers of the graded film** within fifteen (15) days from receipt thereof.

Proprietors, operators and lessees of theaters or cinemas who fail to remit the amusement tax proceeds within the prescribed period shall be liable to a **surcharge** equivalent to five percent (5%) of the amount due for each month of delinquency which shall be paid to the Council. (Emphasis supplied.)

To ensure enforcement of the above provision, the law empowered petitioner not only to impose administrative fines and penalties but also to cause or initiate criminal or administrative prosecution to the violators.⁶

⁵ R.A. No. 9167, Sec. 3(2).

⁶ Id., Sec. 15.

On January 27, 2009, petitioner through the Office of the Solicitor General (OSG) sent a demand letter to respondent for the payment of the sum of ₱76,836,807.08 representing the amusement tax rewards due to producers of 89 films graded “A” and “B” which were shown at SM cinemas from September 11, 2003 to November 4, 2008.⁷

Sometime in May 2009, the City of Cebu filed in the RTC of Cebu City (Cebu City RTC) a petition⁸ for declaratory relief with application for a writ of preliminary injunction against the petitioner, docketed as Civil Case No. **CEB-35529**. The City of Cebu sought to declare Section 14 of R.A. No. 9167 as invalid and unconstitutional on grounds that: (1) it violates the basic policy on local autonomy; (2) it constitutes an undue limitation of the taxing power of LGUs; (3) it unduly deprives LGUs of the revenue from the amusement tax imposed on theatre owners and operators; and (4) it amounts to technical malversation since revenue from the collection of amusement taxes that would otherwise accrue to and form part of the general fund of the LGU concerned would now be directly awarded to a private entity – the producers of graded films – bypassing the budget process of the LGU and without the proper appropriation ordinance from the *sanggunian*.⁹

A temporary restraining order (TRO) was issued by the Cebu City RTC enjoining petitioner and its duly constituted agents from collecting the amusement tax incentive award from the owners, proprietors or lessees of theaters and cinema houses within the City of Cebu; imposing surcharge on the unpaid amount; filing any case or suit of whatever kind or nature due to or arising from the failure to deduct, withhold and remit the amusement tax incentives award on the graded films of petitioner; and initiating administrative or criminal prosecution against the said owners, proprietors or lessees.¹⁰

On October 16, 2009, petitioner sued the respondent for the payment of ₱76,836,807.08 representing the unpaid amusement tax incentive reward (with 5% surcharge for each month of delinquency) due to the producers of 89 graded films which were shown at SM Cinemas in Cebu City from September 11, 2003 to November 4, 2008, plus a 5% surcharge for each month of delinquency until fully paid. Said collection suit was docketed as Civil Case No. **72238** of the RTC of Pasig City (Pasig City RTC), Branch 166.¹¹

Petitioner filed a Comment (In Lieu of Answer)¹² in Civil Case No. CEB-35529 praying for the dismissal of the petition filed by the City of Cebu.

⁷ *Rollo*, pp. 43-45.

⁸ *Id.* at 46-63.

⁹ *Id.* at 55.

¹⁰ *Id.* at 260.

¹¹ *Id.* at 433-442.

¹² *Id.* at 93-110.

Meanwhile, respondent filed a Motion to Dismiss¹³ in Civil Case No. 72238 arguing that petitioner's complaint merits outright dismissal considering that its claim had already been extinguished by respondent's prior payment or remittance of the subject amusement taxes to the City of Cebu. Respondent called attention to Section 26 of the Implementing Rules and Regulations (IRR) of R.A. No. 9167 which directed petitioner to execute a Memorandum of Agreement (MOA) with proprietors, operators and lessees of theaters and cinemas as well as movie producers, on the systems and procedures to be followed for the collection, remittance and monitoring of the amusement taxes withheld on graded films. In the apparent absence of such MOA and the "general procedure/process" duly adopted by all proprietors, operators and lessees of theaters or cinemas, respondent has been withholding such taxes and remitting the same to the City of Cebu pursuant to Cebu City Tax Ordinance No. LXIX, as shown by the Certification¹⁴ dated February 5, 2009 issued by the Office of the Treasurer of Cebu City stating that respondent "had religiously remitted their monthly amusement taxes due to the Cebu City Government." Respondent pointed out that even the Cebu City Government recognizes that when it receives the amusement taxes collected or withheld by the owners, operators and proprietors of theaters and cinema houses on graded films, it is mandated to forward the said taxes to petitioner.

In its Comment¹⁵ on the motion to dismiss, petitioner argued that Section 14 of R.A. No. 9167 is valid and constitutional. As to respondent's defense of prior payment, petitioner asserted that the execution of a MOA with the proprietors, owners and lessees of theaters and cinema houses is not a condition *sine qua non* for a valid enforcement of the provisions of R.A. No. 9167. The IRR cited by respondent cannot prevail over the clear import of the law on which it is based, and hence respondent cannot invoke it to excuse non-payment of the amusement tax incentive rewards due to the producers of graded films which should have been remitted to petitioner in accordance with Section 14 of R.A. No. 9167. Petitioner pointed out that from the time R.A. No. 9167 took effect up to the present, all the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines, with the sole exception of Cebu City and a number of theater establishments therein, have unanimously acceded to and have faithfully complied with the mandate of said law notwithstanding the absence of a MOA.

Respondent filed its Reply¹⁶ to petitioner's Comment maintaining that its remittance of the amusement tax incentive reward to the City of Cebu extinguished its obligation to petitioner, and arguing that the case should be dismissed on the additional ground of *litis pendentia*.

¹³ Id. at 121-134.

¹⁴ Id. at 230.

¹⁵ Id. at 261-295.

¹⁶ Id. at 577-590.

On August 13, 2010, respondent filed in Civil Case No. CEB-35529 a Motion for Leave to File and Admit Attached Comment-in-Intervention.¹⁷ In its Comment-in-Intervention With Interpleader, respondent prayed that the judgment on the validity and constitutionality of Sections 13 and 14 of R.A. No. 9167 include a pronouncement on its rights and duties as a consequence of such judgment, as it clearly has a legal interest in the success of either party in the case.¹⁸ On October 21, 2010, the Cebu City RTC granted respondent's motion for intervention.¹⁹

On February 21, 2011, the Pasig City RTC issued the assailed order granting the motion to dismiss, holding that the action before the Cebu City RTC (Civil Case No. CEB-35529) is the appropriate vehicle for litigating the issues between the parties in Civil Case No. 72238. Moreover, said court found all the elements of *litis pendentia* present and accordingly dismissed the complaint. Petitioner's motion for reconsideration was likewise denied.

In a direct recourse to this Court, petitioner advances the following questions of law:

I

THE RTC, BRANCH 166, OF PASIG CITY UTTERLY IGNORED AND DISREGARDED THE WELL-SETTLED RULE THAT UNLESS AND UNTIL A SPECIFIC PROVISION OF LAW IS DECLARED INVALID AND UNCONSTITUTIONAL, THE SAME IS ENTITLED TO OBEDIENCE AND RESPECT.

II

THE RTC, BRANCH 166, OF PASIG CITY ERRED IN DISMISSING THE COMPLAINT IN CIVIL CASE NO. 72238 ON THE GROUND OF *LITIS PENDENTIA*.²⁰

Petitioner reiterates that every law has in its favor the presumption of constitutionality, and unless and until a specific provision of law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes. In dismissing the complaint, the Pasig City RTC abdicated its solemn duty and jurisdiction to rule on the constitutional issues raised by respondent in Civil Case No. 72238 upon the mistaken assumption that only the Cebu City RTC in Civil Case No. CEB-35529 can directly determine the constitutionality of Sections 13 and 14 of R.A. No. 9167 and the indispensability of a MOA in the remittance to petitioner of amusement tax rewards due to the producers of graded films. Petitioner further contends that, contrary to the ruling of the Pasig City RTC, the principle of judicial courtesy is not applicable because a judgment in Civil Case No. CEB-35529

¹⁷ Id. at 421-430.

¹⁸ Id. at 452-470.

¹⁹ Id. at 781.

²⁰ Id. at 13.

will not result in rendering moot the issues brought before the Pasig City RTC in Civil Case No. 72238.

The petition has no merit.

We do not subscribe to petitioner's view that the dismissal of the complaint in Civil Case No. 72238 amounts to an abdication of the Pasig City RTC's concurrent jurisdiction to settle constitutional questions involving a statute or its implementing rules. The 1997 Rules of Civil Procedure, as amended, provides for specific grounds for the dismissal of any complaint in civil cases including those where the trial court has competence and authority to hear and decide the issues raised and relief sought. One of these grounds is *litis pendentia*.

Litis pendentia, as a ground for the dismissal of a civil action, refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious.²¹ It is based on the policy against multiplicity of suits²² and authorizes a court to dismiss a case *motu proprio*.²³

Section 1(e), Rule 16 of the 1997 Rules of Civil Procedure, as amended, thus provides:

SECTION 1. *Grounds*.—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(e) That there is another action pending between the same parties for the same cause[.]

The requisites in order that an action may be dismissed on the ground of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts, and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.²⁴

Petitioner submits that while there is identity of parties in Civil Case Nos. CEB-35529 and 72238, the second and third requisites are absent. It points out that in the former, it is not claiming any monetary award but merely prayed for the dismissal of the declaratory relief petition. Moreover,

²¹ *Proton Pilipinas Corporation v. Republic of the Phils.*, 535 Phil. 521, 536-537 (2006); *Guaranteed Hotels, Inc. v. Baltao*, 489 Phil. 702, 707 (2005).

²² *Dotmatrix Trading v. Legaspi*, G.R. No. 155622, October 26, 2009, 604 SCRA 431, 436, citing *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393; *Calo v. Tan*, G.R. No. 151266, November 29, 2005, 476 SCRA 426, 440.

²³ *Subic Telecommunications Company, Inc. v. Subic Bay Metropolitan Authority*, G.R. No. 185159, October 12, 2009, 603 SCRA 470, 481, citing *Rudolf Lietz Holdings, Inc. v. Registry of Deeds of Parañaque City*, G.R. No. 133240, November 15, 2000, 344 SCRA 680, 686.

²⁴ *Republic v. Carmel Development, Inc.*, 427 Phil. 723, 739 (2002).

since the issues raised in the former case are purely legal, petitioner is not necessarily called upon to present testimonial or documentary evidence to prove factual matters. Petitioner thus concludes that the judgment in former case would not amount to *res judicata* in the latter case. Petitioner further notes that when a judgment dismissing the former case is appealed and the assailed provisions of R.A. No. 9167 are declared constitutional by this Court, petitioner will not be automatically awarded the unpaid amusement taxes it is claiming against respondent in Civil Case No. 72238.

Petitioner's submissions fail to persuade.

The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons,²⁵ and also to avoid the costs and expenses incident to numerous suits.²⁶

Among the several tests resorted to in ascertaining whether two suits relate to a single or common cause of action are: (1) whether the same evidence would support and sustain both the first and second causes of action; and (2) whether the defenses in one case may be used to substantiate the complaint in the other.²⁷

The determination of whether there is an identity of causes of action for purposes of *litis pendentia* is inextricably linked with that of *res judicata*, each constituting an element of the other. In either case, both relate to the sound practice of including, in a single litigation, the disposition of all issues relating to a cause of action that is before a court.²⁸

In this case, what petitioner failed to take into account is that the Cebu City RTC allowed respondent to intervene in Civil Case No. CEB-35529 by way of an interpleader action as to which government entity – whether petitioner or the Cebu City Government – should have remitted the amusement taxes it collected from the admission fees of graded films shown in respondent's cinemas in Cebu City. It must be noted that since 1993 when City Tax Ordinance No. LXIX was enforced, respondent had been faithfully remitting amusement taxes to the City of Cebu and because of the collection suit filed by petitioner, such defense of prior payment and evidence to prove it which respondent could have presented at the trial in Civil Case No. 72238 would be the same defense and evidence necessary to sustain respondent's interpleader action in Civil Case No. CEB-35529

²⁵ *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 429.

²⁶ *Subic Telecommunications Company, Inc. v. Subic Metropolitan Authority*, supra note 23, at 481-482.

²⁷ *Id.* at 482, citing *Feliciano v. Court of Appeals*, G.R. No. 123293, March 5, 1998, 287 SCRA 61, 68 and *Victronics Computers, Inc. v. RTC, Branch 63, Makati*, G.R. No. 104019, January 25, 1993, 217 SCRA 517, 530.

²⁸ *Id.*

before the Cebu City RTC. Also, in both cases, respondent had raised the matter of conflicting provisions of R.A. No. 9167 and Local Government Code of 1991, while petitioner pleaded and argued the constitutionality and validity of Sections 13 and 14 of R.A. No. 9167.

The interpleader action of respondent/intervenor, anchored on its defense of prior payment, would be considered by the Cebu City RTC in its final determination of the parties' rights and interests as it resolves the legal questions. The Pasig City RTC is likewise confronted with the legal and constitutional issues in the collection suit, alongside with respondent's defense of prior payment. It is evident that petitioner's claim against the respondent hinges on the correct interpretation of the conflicting provisions of the Local Government Code of 1991 and R.A. No. 9167. There could be no doubt that a judgment in either case would constitute *res judicata* to the other. Sound practice thus dictates that the common factual and legal issues be resolved in a single proceeding.

We also find no reversible error in the Pasig City RTC's ruling that Civil Case No. CEB-35529 is the appropriate vehicle for litigating the issues raised by petitioner and respondent in Civil Case No. 72238.

Under the established jurisprudence on *litis pendentia*, the following considerations predominate in the ascending order of importance in determining which action should prevail: (1) the date of filing, with preference generally given to the first action filed to be retained; (2) whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and (3) whether the action is the appropriate vehicle for litigating the issues between the parties.²⁹

Moreover, considering the predicament of respondent, we also find relevant the criterion of the *consideration of the interest of justice* we enunciated in *Roa v. Magsaysay*.³⁰ In applying this standard, what was asked was which court would be "in a better position to serve the interests of justice," taking into account (a) the nature of the controversy, (b) the comparative accessibility of the court to the parties and (c) other similar factors.³¹

In this case, all things considered, there can be no doubt Civil Case No. CEB-35529 is the appropriate vehicle to determine the rights of petitioner and respondent. In that declaratory relief case instituted by the City of Cebu, to which respondent had been remitting the subject

²⁹ *Dotmatrix Trading v. Legaspi*, supra note 22, at 442, citing *Mid-Pasig Land Development Corporation v. Court of Appeals*, G.R. No. 153751, October 8, 2003, 413 SCRA 204, 213; *Panganiban v. Pilipinas Shell Petroleum Corp.*, G.R. No. 131471, January 22, 2003, 395 SCRA 624, 634; *Compania General de Tabacos de Filipinas v. Court of Appeals*, G.R. Nos. 130326 & 137868, November 29, 2001, 371 SCRA 95, 114-115; *Allied Banking Corp. v. Court of Appeals*, G.R. No. 95223, July 26, 1996, 259 SCRA 371, 378.

³⁰ 187 Phil. 390, 402 (1980).

³¹ *Victronics Computers, Inc. v. RTC, Branch 63, Makati*, supra note 27, at 534.


amusement taxes being claimed by petitioner in Civil Case No. 72238, the issue of validity or constitutionality of Sections 13 and 14 of R.A. No. 9167 was directly pleaded and argued between petitioner and the City of Cebu, with subsequent inclusion of respondent as intervenor. Moreover, the presence of City of Cebu as party plaintiff would afford proper relief to respondent in the event the Cebu City RTC renders judgment sustaining the validity of the said provisions. Respondent had vigorously asserted in both courts that it had remitted the amusement taxes in *good faith* to the City of Cebu which had threatened sanctions for non-compliance with City Tax Ordinance No. LXIX, and that it should not be made to pay once again the same taxes to petitioner. As equally dire consequences for non-compliance with the demand for payment having been made by petitioner, such defense of good faith is best ventilated in Civil Case No. CEB-35529 where the City of Cebu is a party.

Petitioner's insistence that the Pasig City RTC proceed with trial notwithstanding the pendency of Civil Case No. CEB-35529 before the Cebu City RTC is thus untenable. To allow the parties to litigate the same issues upon the same evidence and defenses will only defeat the public policy reasons behind *litis pendentia*, which, like the rule on forum shopping, aims to prevent the unnecessary burdening of our courts and undue taxing of the manpower and financial resources of the judiciary; to avoid the situation where co-equal courts issue conflicting decisions over the same cause; and to preclude one party from harassing the other party through the filing of an unnecessary or vexatious suit.³²

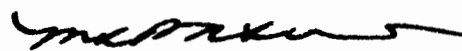
WHEREFORE, the petition for review on certiorari is **DENIED**. The Orders dated February 21, 2011 and July 25, 2011 of the Regional Trial Court of Pasig City, Branch 166 are hereby **AFFIRMED**.

No pronouncement as to costs.


SO ORDERED.

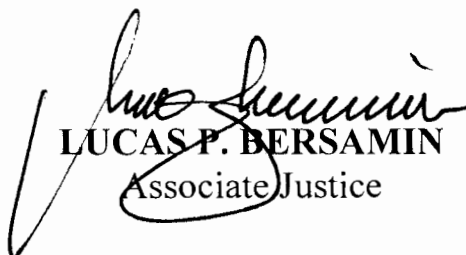

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

³² *Dotmatrix Trading v. Legaspi*, supra note 22, at 443, citing *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 433-434.

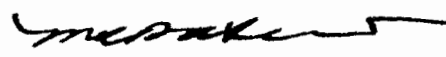

TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice