



Republic of the Philippines
Supreme Court
Manila

EN BANC

LUIS R. VILLAFUERTE,
Petitioner,

G.R. No. 206698

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, JJ.

- versus -

COMMISSION ON ELECTIONS and
MIGUEL R. VILLAFUERTE,
Respondents.

Promulgated:

FEBRUARY 25, 2014

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DECISION

PERALTA, J.:

Assailed via petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order is the Resolution¹ dated April 1, 2013 issued by the Commission on

* On leave.

¹ *Rollo*, pp. 79-88; Per Curiam; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca; Docketed as SPA Case No. 13-154 (DC)(F)

Elections (*COMELEC En Banc*), which affirmed the Resolution² dated January 15, 2013 of its First Division dismissing petitioner Luis R. Villafuerte's verified petition to deny due course to or cancel the certificate of candidacy of Miguel R. Villafuerte (*respondent*).

Petitioner and respondent were both candidates for the Gubernatorial position of the Province of Camarines Sur in the May 13, 2013 local and national elections. On October 25, 2012, petitioner filed with the COMELEC a Verified Petition³ to deny due course to or cancel the certificate of candidacy (*COC*) of respondent, alleging that respondent intentionally and materially misrepresented a false and deceptive name/nickname that would mislead the voters when he declared under oath in his COC that "L-RAY JR.-MIGZ" was his nickname or stagename and that the name he intended to appear on the official ballot was VILLAFUERTE, L-RAY JR.-MIGZ NP; that respondent deliberately omitted his first name "MIGUEL" and inserted, instead "LRAY JR.," which is the nickname of his father, the incumbent Governor of Camarines Sur, "LRay Villafuerte, Jr."

In his Answer with Special and Affirmative Defenses,⁴ respondent denied the commission of any material misrepresentation and asserted, among others, that he had been using the nickname "LRAY JR. MIGZ" and not only "MIGZ"; that the choice of name/word to appear on the ballot was solely his choice or preference; and that the presumption that the voters would be confused on the simple fact that his name would be placed first in the ballot was misplaced.

On January 15, 2013, the COMELEC's First Division denied the petition for lack of merit and disposed as follows:

x x x no compelling reason why the COC of respondent should be denied due course to or cancelled on the sole basis of an alleged irregularity in his name/nickname. Laws and jurisprudence on the matter are clear that material misrepresentation in the COC pertains only to qualifications of a candidate, such as citizenship, residency, registration as a voter, age, etc. Nothing has been mentioned about a candidate's name/nickname as a ground to deny due course or cancel his/her COC. When the language of the law is clear and explicit, there is no room for interpretation, only application.⁵

Petitioner filed a motion for reconsideration with the COMELEC *En Banc*, which denied the same in a Resolution dated April 1, 2013.

² *Id.* at 46-49; Per Curiam; Signed by Presiding Commissioner Rene V. Sarmiento, Armando C. Velasco and Christian Robert S. Lim.

³ *Rollo*, pp. 89-112.

⁴ *Id.* at 126-137.

⁵ *Id.* at 48.

The COMELEC found that its First Division did not err in denying the petition as existing law and jurisprudence are clear in providing that a misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility; and that a misrepresentation of a non-material fact is not a ground to deny due course to or cancel a certificate of candidacy under Section 78 of the Omnibus Election Code. It found that petitioner's allegations did not pertain to respondent's qualifications or eligibility for the office to which he sought to be elected. The candidate's use of a name or nickname is a not a ground to deny due course to or cancel a certificate of candidacy.

Dissatisfied, petitioner filed the instant petition for *certiorari* and prohibition alleging the following issues:

I

Respondent COMELEC palpably and seriously committed grave abuse of discretion amounting to lack and/or in excess of jurisdiction when it whimsically and capriciously limited the grounds provided in Section 78 in relation to Section 74 of the Omnibus Election Code to a candidate's qualifications only and excluding as a ground a candidate's material representation that is FALSE on his identity which renders him ineligible to be voted for as a candidate, because a FALSE representation of ones' true name/nickname as a candidate is a deliberate attempt to misinform, mislead, and deceive the electorate and notwithstanding that Section 78 of the Omnibus Election Code expressly states that “any” material misrepresentation in violation of Section 74 of the same Code is a ground for cancellation of a Certificate of Candidacy.

II

Respondent COMELEC committed serious errors and patent grave abuse of discretion amounting to lack and/or in excess of jurisdiction in failing or refusing to apply prevailing jurisprudence and law, wherein it was held: that cancellation of COC is not based on the lack of qualification although it may relate to qualification based on a “finding that a candidate made a material representation that is false”; thereby disregarding the well-entrenched rulings of this Honorable Court that material misrepresentation may also include ineligibilities to run for office or to assume office and is not limited to qualifications; utterly ignoring the ruling of this Honorable Court that votes cast in favor of a candidate using a nickname in violation of Section 74 are STRAY votes, and in turning a blind eye to its constitutional and statutory duty and responsibility to protect the rights of the voters and the integrity of the electoral processes in our country, among others.

III

Respondent COMELEC whimsically, capriciously and despotically allowed herein respondent MIGUEL to use “LRAY JR.-MIGZ” and thereby illegally disregarded the effects of R.A. 8436 as amended by R.A. 9369 or the Automation Law and the requirement therein for the alphabetical arrangement of the names of the candidates and for allowing respondent Miguel to deliberately and misleadingly omit his baptismal

first name MIGUEL which is mandatorily required by Section 74 to be included in his COC and for respondent Miguel to use more than one nickname for which he is not generally or popularly known in Camarines Sur.

IV

Material misrepresentation as contemplated by law is NOT to protect respondent as a candidate, but MORESO, to protect the right of other candidates under the Automation Law, and more importantly to protect the electorate from being misinformed, misled and deceived.⁶

The main issue for resolution is whether respondent committed a material misrepresentation under Section 78 of the Omnibus Election Code so as to justify the cancellation of his COC.

Petitioner filed the petition under Section 78 of the Omnibus Election Code claiming that respondent committed material misrepresentation when the latter declared in his COC that his name/nickname to be printed in the official ballot was VILLAFUERTE, LRAY JR.-MIGZ instead of his baptismal name, VILLAFUERTE, MIGUEL-MIGZ; that such declaration made under oath constitutes material misrepresentation even if the material misrepresentation did not refer to his qualifications but referred to his eligibility to be validly voted for as a candidate and, consequently, to his eligibility to assume office.

We find no merit in the argument.

Section 73 of the Omnibus Election Code states that no person shall be eligible for any elective public office unless he files a sworn COC within the period fixed herein. Section 74 thereof enumerates the contents of the COC, to wit:

Sec. 74. Contents of certificate of candidacy. – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

⁶ *Id.* at 15-17. (Underscoring omitted)

Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

And the proper procedure to be taken if a misrepresentation is committed by a candidate in his COC is to question the same by filing a verified petition pursuant to Section 78, thus:

Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

Clearly, Section 78 states that the false representation in the contents of the COC required under Section 74 must refer to material matters in order to justify the cancellation of the COC. What then constitutes a material misrepresentation?

In *Salcedo II v. Commission on Elections*,⁷ petitioner Victorino Salcedo II filed with the COMELEC a petition seeking cancellation of respondent Ermelita Salcedo's (*Ermelita*) COC on the ground that she had made material misrepresentation by stating her surname as Salcedo. Petitioner claimed that Ermelita had no right to use the surname Salcedo, since her marriage to Neptali Salcedo was void. The COMELEC *En Banc* found that Ermelita did not commit any misrepresentation nor usurp another's name since she had the right to use her husband's surname for being married to him, and thus, validated her proclamation as Mayor of Sara, Iloilo. Salcedo appealed the COMELEC's resolution, and we held:

⁷ 371 Phil. 377 (1999).

In case there is a material misrepresentation in the certificate of candidacy, the Comelec is authorized to deny due course to or cancel such certificate upon the filing of a petition by any person pursuant to Section 78 x x x

As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertain[s] to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a “material representation,” the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.⁸

x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

x x x x

Aside from the requirement of materiality, a false representation under Section 78 must consist of a “deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible.” In other words, it must be made with an intention to deceive the electorate as to one’s qualifications for public office. The use of surname, when not intended to mislead, or deceive the public as to one’s identity is not within the scope of the provision.⁹

In *Aratea v. Commission on Elections*,¹⁰ we proclaimed Estela D. Antipolo, the alleged second placer, as Mayor of San Antonio, Zambales, being the one who remained as the sole qualified candidate for the mayoralty post and obtained the highest number of votes, since the COC of Romeo D. Lonzanida, the first placer, was declared void *ab initio*. We find that violation of the three-term limit is an eligibility affecting the qualification of a candidate to elective office and the misrepresentation of such is a ground to grant the petition to deny due course or cancel a COC. We said that:

Section 74 requires the candidate to certify that he is eligible for the public office he seeks election. Thus, Section 74 states that “the certificate of candidacy shall state that the person filing x x x is eligible for said office.” The three-term limit rule, enacted to prevent the

⁸ *Id.* at 385-386.

⁹ *Id.* at 389-390. (Citations omitted)

¹⁰ G.R. No. 195229, October 9, 2012, 683 SCRA 105.

establishment of political dynasties and to enhance the electorate's freedom of choice, is found both in the Constitution and the law. After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.¹¹

X X X X

In a certificate of candidacy, the candidate is asked to certify under oath his eligibility, and thus qualification, to the office he seeks election. Even though the certificate of candidacy does not specifically ask the candidate for the number of terms elected and served in an elective position, such fact is material in determining a candidate's eligibility, and thus qualification for the office. Election to and service of the same local elective position for three consecutive terms renders a candidate ineligible from running for the same position in the succeeding elections. Lonzanida misrepresented his eligibility because he knew full well that he had been elected, and had served, as mayor of San Antonio, Zambales for more than three consecutive terms yet he still certified that he was eligible to run for mayor for the next succeeding term. Thus, Lonzanida's representation that he was eligible for the office that he sought election constitutes false material representation as to his qualification or eligibility for the office.¹²

In *Justimbaste v. Commission on Elections*,¹³ where petitioner therein claimed that respondent committed material misrepresentation when he stated his name in the COC as Rustico Besa Balderian instead of Chu Teck Siao, we found that it had been established that in all of respondent's school records, he had been using Rustico Besa Balderian, the name under which he was baptized and known since he can remember. He never used the name Chu Teck Siao by which he was registered. It was also established that he had filed a petition for change of name to avoid any confusion and which the RTC had granted. We then said, that -

AT ALL EVENTS, the use of a name other than that stated in the certificate of birth is not a material misrepresentation, as "material misrepresentation" under the earlier-quoted Section 78 of the Omnibus Election Code refers to "qualifications for elective office." It need not be emphasized that there is no showing that there was an intent to deceive the electorate as to private respondent's identity, nor that by using his Filipino name the voting public was thereby deceived.¹⁴

¹¹ *Id.* at 136-137.

¹² *Id.* at 143-144.

¹³ G.R. No. 179413, November 28, 2008, 572 SCRA 736.

¹⁴ *Id.* at 748-749.

Clearly, from the foregoing, for the petition to deny due course or cancel the COC of one candidate to prosper, the candidate must have made a material misrepresentation involving his eligibility or qualification for the office to which he seeks election, such as the requisite residency, age, citizenship or any other legal qualification necessary to run for local elective office as provided in the Local Government Code.¹⁵ Hence, petitioner's allegation that respondent's nickname "LRAY JR. MIGZ" written in his COC is a material misrepresentation is devoid of merit. Respondent's nickname written in the COC cannot be considered a material fact which pertains to his eligibility and thus qualification to run for public office.

Moreover, the false representation under Section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. As we said, respondent's nickname is not considered a material fact, and there is no substantial evidence showing that in writing the nickname "LRAY JR. MIGZ" in his COC, respondent had the intention to deceive the voters as to his identity which has an effect on his eligibility or qualification for the office he seeks to assume.

Notably, respondent is known to the voters of the Province of Camarines Sur as the son of the then incumbent Governor of the province, popularly known as "LRay." Their relationship is shown by the posters, streamers and billboards displayed in the province with the faces of both the father and son on them. Thus, the voters of the Province of Camarines Sur know who respondent is. Moreover, it was established by the affidavits of respondent's witnesses that as the father and son have striking similarities, such as their looks and mannerisms, which remained unrebutted, the appellation of LRAY JR. has been used to refer to respondent. Hence, the appellation LRAY JR., accompanied by the name MIGZ¹⁶ written as respondent's nickname in his COC, is not at all misleading to the voters, as in fact, such name distinguishes respondent from his father, the then incumbent "Governor LRAY," who was running for a Congressional seat in the 2nd District of Camarines Sur. As we ruled in *Salcedo II v. COMELEC*,¹⁷ the use of a surname, when not intended to mislead or deceive the public as to one's identity, is not within the scope of Section 78 of the Omnibus

¹⁵ *Salcedo II v. COMELEC*, *supra* note 7, at 389, citing RA 7160, Section 39 on qualifications.

¹⁶ Section 211. *Rules for the appreciation of ballots.* - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x

13. The use of the nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid: Provided, That if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the name shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname.

¹⁷ *Supra* note 7, at 390.

Election Code. Thus, respondent's nickname written in his COC, without intending to mislead the voters as to his identity, cannot be canceled. We find no grave abuse of discretion committed by the COMELEC *En Banc* in finding that respondent did not commit material misrepresentation in his COC.

Petitioner relies on *Villarosa v. House of Representatives Electoral Tribunal*¹⁸ to justify the annulment of respondent's COC. In *Villarosa*, which involves the counting of ballots under the manual elections, respondent Quintos filed an election protest relating to the proclamation of Amelita Villarosa (*Villarosa*) alleging that the "JTV" votes should not be counted in the latter's favor. We then held that Villarosa's use of "JTV" as her nickname was a clever ploy to make a mockery of the election process; thus, votes of "JTV" were considered stray votes. In so ruling, we found that "JTV" is the nickname of Villarosa's husband, who was then the incumbent representative of Occidental Mindoro; that when Villarosa's husband ran and campaigned for as representative in both the 1992 and 1995 elections in the same legislative district where Villarosa ran in the May 1998 elections, he was generally known as "JTV." We thus ruled that the voters who wrote "JTV" in the ballots had no other person in mind except then incumbent representative Jose Tapales Villarosa, or the same person whom they have known for a long time as "JTV." We also took into consideration Villarosa's statement in her affidavit admitting that she was generally and popularly known in every barangay in Occidental Mindoro as "GIRLIE" before and after she filed her COC; and even her counsel asserted during the oral argument that her other nickname before she filed her COC was "Mrs. JTV" and not "JTV." We also found that since the name "GIRLIE" written on the space for representative was in fact claimed by petitioner Villarosa and credited in her favor, then the "JTV" votes under the *idem sonans* rule cannot be counted for Villarosa, because only one nickname or stagename is allowed; and that Rule 13 of Section 211 of the Omnibus Election Code, which allows the use of a nickname and appellation of affection and friendship, provided that it is accompanied by the first name or surname of the candidate, was not applied since the "JTV" votes were unaccompanied by her first name or surname. Thus, we found that malice and bad faith on the part of Villarosa was evident when, in her COC and campaign materials, she appropriated the initials or nickname of her husband, the incumbent representative of the district in question.

Villarosa is not on all fours with this case. This case is a petition to deny due course and to cancel COC on the ground of a statement of a material representation that is false; to be material, such must refer to an eligibility or qualification for the elective office the candidate seeks to hold. Here, respondent's nickname is not a qualification for a public office

¹⁸ 394 Phil. 730 (2001).

which affects his eligibility. Notably, respondent's father, who won 3 consecutive terms as Governor of the Province of Camarines Norte, is popularly known as "LRAY," so when respondent wrote in his COC, "LRAY JR. MIGZ" as his nickname, he differentiated himself from Governor "LRAY," which negates any intention to mislead or misinform or hide a fact which would otherwise render him ineligible. Also, the appellation LRAY JR. was accompanied by the name MIGZ which was not so in the *Villarosa* case.

It bears stressing that Section 74 requires, among others, that a candidate shall use in a COC the name by which he has been baptized, unless the candidate has changed his name through court-approved proceedings, and that he may include one nickname or stagename by which he is generally or popularly known in the locality, which respondent did. As we have discussed, the name which respondent wrote in his COC to appear in the ballot, is not considered a material misrepresentation under Section 78 of the Omnibus Election Code, as it does not pertain to his qualification or eligibility to run for an elective public office. By invoking the case of *Villarosa* which is in the nature of an election protest relating to the proclamation of Villarosa, petitioner should have instead filed an election protest and prayed that the votes for respondent be declared as stray votes, and not a petition to deny due course or cancel the COC.

Finally, petitioner claims that the false representation of respondent's nickname written on the COC is meant to undermine the statutory requirement regarding the alphabetical listing/arrangement of names of the candidate as provided under Section 13¹⁹ of Republic Act No. (RA) 9369 amending RA 8436, the automated election system; that he would be put to a great and undue disadvantage as he became no. 5, while respondent was in no. 4 in the list of candidates for Governor of Camarines Sur.

We are not persuaded.

¹⁹ Sec. 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

SEC. 15. *Official Ballot*. - The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be filled and/or the proposition to be voted upon in an initiative, referendum or plebiscite. Where practicable, electronic displays must be constructed to present the names of all candidates for the same position in the same page or screen, otherwise, the electronic displays must be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot. **Under each position to be filled, the names of candidates shall be arranged alphabetically by surname and uniformly indicated using the same type size.** The maiden or married name shall be listed in the official ballot, as preferred by the female candidate. Under each proposition to be vote upon, the choices should be uniformly indicated using the same font and size. (Emphasis supplied).

Considering that respondent's name is **VILLAFUERTE, LRAY JR.-MIGZ**, his name would indeed be ahead of petitioner's name, **VILLAFUERTE, LUIS**, in the official ballot which contains the alphabetical listing of the candidates for the gubernatorial position of the Province of Camarines Sur. However, petitioner's claim that such listing would lead to confusion as to put him to undue disadvantage is merely speculative and without basis as the voters can identify the candidate they want to vote for.

WHEREFORE, the petition is **DENIED**. The Resolution dated April 1, 2013, of the Commission on Elections *En Banc*, is hereby **AFFIRMED**.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

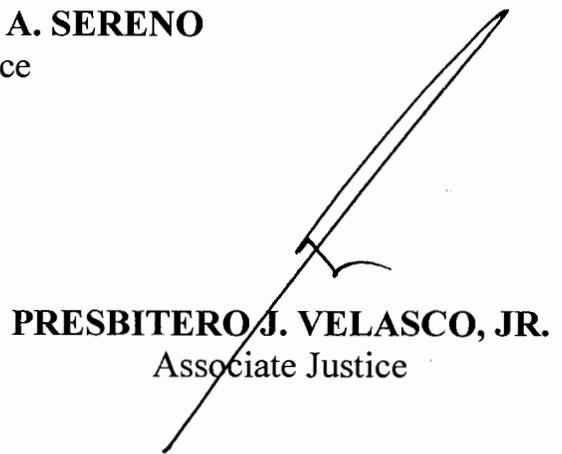
WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice

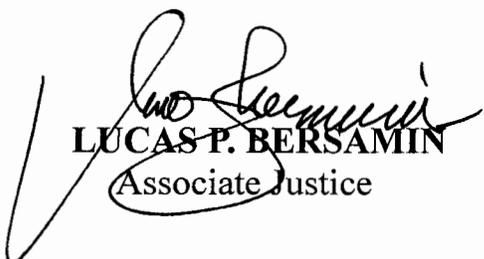


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On leave
ARTURO D. BRION
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice


ROBERTO A. ABAD
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC MARIO VICTOR LEONEN
Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice