Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SR METALS, INC., SAN R MINING AND CONSTRUCTION CORP. and GALEO EQUIPMENT AND MINING COMPANY, INC., *Petitioners,*	**G.R. No. 179669**
- versus -	Present: CARPIO, *Chairperson,* BRION, DEL CASTILLO, PEREZ, *and* PERLAS-BERNABE, *JJ.*
THE HONORABLE ANGELO T. REYES, in his capacity as Secretary of DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), *Respondent.*	Promulgated: JUN 04 2014

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DECISION

DEL CASTILLO, *J.*:

In this Petition for Review on *Certiorari*, SR Metals, Inc., SAN R Mining and Construction Corp., and Galeo Equipment and Mining Co., Inc. (hereinafter referred to as 'mining corporations') assail the Decision[1] and Resolution[2] dated July 4, 2007 and September 14, 2007, respectively, of the Court of Appeals (CA), in CA-G.R. SP No. 97127. The mining corporations fault the CA for (a) upholding the validity of the provision of Presidential Decree (PD) No. 1899[3] which limits the annual production/extraction of mineral ore in small-scale mining to 50,000 metric tons (MT) despite its being violative of the equal protection clause, and (b) adopting the Mines and Geosciences Bureau's (MGB) definition of 'ore,' which led the said court to conclude that the mining corporations had exceeded the aforesaid 50,000-MT limit.

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1 CA *rollo*, pp. 556-579; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Sesinando E. Villon.

2 Id. at 1161-1167.

3 Entitled "Establishing Small-Scale Mining as a New Dimension in Mineral Development," which took effect on January 23, 1984.

Factual Antecedents

On March 9, 2006, each of the petitioners was awarded a 2-year Small-Scale Mining Permit[4] (SSMP) by the Provincial Mining Regulatory Board of Agusan del Norte; they were allowed to extract Nickel and Cobalt (Ni-Co) in a 20-hectare mining site in Sitio Bugnang, Brgy. La Fraternidad, Tubay, Agusan del Norte. These permits were granted after the Environmental Management Bureau (EMB), Region XIII of the Department of Environment and Natural Resources (DENR) issued on March 2, 2006 Environmental Compliance Certificates[5] (ECCs) with a validity period of one year.

The mining corporations' ECCs contain a restriction that the amount of Ni-Co ore they are allowed to extract annually should not exceed 50,000 MTs pursuant to Section 1 of PD 1899 which provides:

> Section 1. Small-scale mining refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore x x x.

Subsequently, however, Agusan del Norte Governor, Erlpe John M. Amante (Governor Amante), questioned the quantity of ore that had been mined and shipped by the mining corporations. In reply, the mining corporations denied having exceeded the extraction limit of 50,000 MTs.[6] They explained that an extracted mass contains only a limited amount/percentage of Ni-Co as the latter is lumped with gangue, *i.e.*, the unwanted rocks and minerals. And it is only after the Ni-Co is separated from the gangue by means of a scientific process should the amount of the Ni-Co be measured and considered as 'ore.' Excluding the gangue, the mining corporations pegged the volume of Ni-Co ore they had extracted from the time they started shipping the same in August 2006 until they filed their Petition before the CA in December 2006 at 1,699.66 MTs of Ni-Co ore only.[7]

Having reservations with the mining corporations' interpretation of the 50,000-MT restriction, Governor Amante sought the opinion of the Department of Justice (DOJ) on the matter.

Meanwhile, the EMB sent the mining corporations a Notice of Violation[8] informing them that they had exceeded the allowed annual volume of 150,000 MTs combined production as their stockpile inventory of Nickeliferous ore had already totaled 177,297 dry metric tons (DMT). This was based on the August 10, 2006 Inspection Report[9] of the MGB Monitoring Team which conducted an

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4 CA *rollo*, pp. 84-94.
5 *Rollo*, pp. 94-102.
6 Letter dated November 7, 2006, id. at 104-105.
7 Id. at 14.
8 Id. at 106-107.
9 Id. at 157-165.

inspection after the DENR received complaints of violations of small-scale mining laws and policies by the mining corporations. A technical conference was thereafter held to hear the side of the mining corporations anent their alleged over-extraction.

On November 26, 2004, DENR Secretary Angelo T. Reyes issued a Cease and Desist Order[10] (CDO) against the mining corporations suspending their operations for the following reasons:

> 1. The excess in 1) annual production of SR Metals, Inc., 2) maximum capitalization, and, 3) labor cost to equipment utilization of 1:1 is, by itself, a violation of existing laws.
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> 2. The ECCs issued in favor of San R Construction Corporation and Galeo Equipment Corporation have no legal basis and [are] therefore considered null and void from the beginning. Similarly, the small scale mining permits that were issued by reason of such ECCs are likewise null and void.[11]

A few days later or on November 30, 2006, DOJ Secretary Raul M. Gonzalez replied to Governor Amante citing DOJ Opinion No. 74, Series of 2006.[12] By comparing PD 1899 to Republic Act (RA) No. 7076,[13] a subsequent law that likewise defines small-scale mining, the DOJ opined that Section 1 of PD 1899 is deemed to have been impliedly repealed by RA 7076 as nothing from the provisions of the latter law mentions anything pertaining to an annual production quota for small-scale mining. It explained:

> The definition of "small scale mining" under R.A. No. 7076 is clear and categorical. Any mining activity that relies heavily on manual labor without use of explosives or heavy mining equipment falls under said definition. It does not mention any annual production quota or limitation. On the contrary, Section 12 thereof is explicit that the contractor, or, specifically, in this case, the permit holders or permitees, are entitled not only to the right to [mine], but also to "extract and dispose of mineral ores (found therein) for commercial purposes" without specific limitation as to the nature of the mineral extracted or the quantity thereof.
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> Moreover, while Section 13 of the law imposes certain duties and obligations upon the contractor or permitee, nothing therein refers directly or otherwise to production quota limitation. Additionally, even Section 10 thereof, which provides for the extent [of] the mining area, does not limit production but only the mining area and depth of the tunnel or adit which, as stated in the law shall "not (exceed) that recommended by the (EMB) director taking into account the "quantity of mineral deposits", among others. It is, however, silent on the

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10 CA *rollo*, pp. 22-25.
11 Id. at 24.
12 *Rollo*, pp. 108-115.
13 Entitled "People's Small Scale Mining Act of 1991," effective July 18, 1991.

> extent of the mining's annual quota production. Thus, anything that is not in the law cannot be interpreted as included in the law x x x[14]

Even assuming that the 50,000-MT ore limit in PD 1899 is still in force, the DOJ categorically concluded that the term 'ore' should be confined only to Ni-Co, that is, excluding soil and other materials that are of no economic value to the mining corporations. This is considering that their ECCs explicitly specified '50,000 MTs of Ni-Co ore.'

The mining corporations then filed before the CA a Petition for *Certiorari* with prayer for Temporary Restraining Order and/or Preliminary Injunction, imputing grave abuse of discretion on the part of DENR in issuing the CDO. Relying on the rationalizations made by the DOJ in its November 30, 2006 Opinion, they vehemently denied having over-extracted Ni-Co.

The Office of the Solicitor General (OSG), for its part, claimed that the CDO was issued for ecological and health reasons and is a preventive measure against disasters arising from multiple acts of over-extraction such as landslides, mudslides and flooding. Also to be respected is the DENR's finding of the mining corporations' over-extraction because being the agency mandated to implement the laws affecting the country's natural resources, the DENR possesses the necessary expertise to come up with such determination. For the same reason, the DENR's definition of small-scale mining particularly that under Mines Administrative Order (MAO) No. MRD-41, series of 1984,[15] must also be sustained.

Furthermore, the OSG averred that the mining corporations' concept of how to measure Ni-Co ore is flawed as this contradicts Section 2 of MAO No. MRD-41 which confines the 50,000-MT limit to run-of-mine ore, *viz.*:

> SECTION 2 - <u>Who May Qualify for the Issuance of a Small Scale Mining Permit</u> – Any qualified person as defined in Sec. 1 of these Regulations, preferably claim owners and applicants for or holders of quarry permits and/or licenses may be issued a small scale mining permit provided that their mining operations, whether newly-opened, existing or rehabilitated, involve:

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[14] *Rollo*, pp. 112-113.

[15] Re: Rules and Regulations Governing the Granting of Small Scale Mining Permits under Presidential Decree No. 1899. Section 1 (1) thereof provides:

> Section 1. Definition of Terms. – As used in this regulations, the following terms shall, unless the context otherwise indicates, have the following meanings:
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> x x x x
>
> (l) "Small Scale Mining" involves the operation of a single unit mining operation having an annual production not exceeding 50,000 metric tons of run-of-mine ore with the following requisites:
>
> (1) The working is artisanal, either open cast or shallow underground mining without the use of sophisticated mining equipment;
>
> (2) Minimal investment on infrastructures and processing plant;
>
> (3) Heavy reliance on manual labor.

> (a) a single mining unit having an annual production not exceeding 50,0000 metric tons of run-of-mine ore, either an open cast mine working or a subsurface mine working which is driven to such distance as safety conditions and practices will allow;
>
> x x x x

The OSG emphasized that in measuring an extraction, the only deduction allowed from an extracted mass of ore is the weight of water, not the soil. It quoted a letter[16] from Director Horacio C. Ramos of the MGB Central Office dated April 30, 2007 addressed to the OSG, which explained the definition of the phrase "50,000-metric ton extraction limit," to wit:

- 50,000 metric tons of run-of-mine per year;
- the run[-]of[-]mine can either be wet or dry;
- traditionally, the production rate for nickel is based on dry since the water or moisture content has no value; and
- thus, if the ore is wet, the weight of water is deducted from the total weight of ores in the determination of the production rate, or for shipment purposes.[17]

Ruling of the Court of Appeals

The CA denied the mining corporations' Petition, not only because the ECCs have been mooted by their expiration, but also due to its recognition of the power of the DENR to issue the CDO as the agency reposed with the duty of managing and conserving the country's resources under Executive Order 192.[18] Anent the issue of whether the imposed limit under PD 1899 should be upheld and whether there was over extraction, the CA had this to say:

> We agree with the OSG's argument that the 50,000[-]metric ton limit pertains to the mined ore in its unprocessed form, including the soil and dirt. The OSG argued that the DOJ Opinion is not binding upon the court and that the agency which is tasked to implement the mining laws is the DENR. Citing the MGB letter-reply, the OSG contended that the limit provided in RA 1899 subsists and RA 7076 did not impliedly repeal the latter. The provisions in both laws are not inconsistent with each other, both recognizing the DENR's authority to promulgate rules and regulations for the implementation of mining laws.[19]

Furthermore, the said court gave credence to the MGB's April 30, 2007 opinion on the definition of the 50,000-MT limit. Rejecting the claims of the mining corporations, it said:

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16 *Rollo*, pp. 251-252.
17 Id. at 252.
18 PROVIDING FOR THE REORGANIZATION OF THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES, RENAMING IT AS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND FOR OTHER PURPOSES.
19 *Rollo*, p. 53.

> x x x Thus, the MAO not only buttresses the OSG's arguments as to what the extraction limit pertains to, x x x it also contravenes [the mining corporations'] assertion that the extraction limit no longer exists and that, even if the limit subsists, they [had] not exceeded the same because they [had] only extracted around 1,600 metric tons. Indeed, for purposes of determining whether the extraction is still within the allowable limits, only the weight of water is deducted from the run-of-mine ore.[20]

The mining corporations moved for partial reconsideration where they again relied heavily on the DOJ Opinion.[21] They also attacked the validity of Section 1(1) of PD 1899 that sets the annual production limit of 50,000-MT on small-scale mining by arguing that it violates the equal protection clause of the Constitution and that it is already repealed by RA 7076. Even granting that the said limit is still in force, the mining corporations asserted that the gangue should not be included in measuring the extraction, since their ECCs clearly provide that 50,000 MTs of Ni-Co ore, not 50,000 MTs of ore, can be extracted.

Ignoring their arguments, the CA stressed that the DENR is the primary government agency responsible for the conservation, management, development, and proper use of the country's mineral resources. It reiterated:

> This Court likewise declared that the MAO adopted the definition of *small scale mining* in PD 1899, including the requirement of observing the extraction limit. Together with the MGB's interpretation of the term "run-of-mine ore", the MAO supports the arguments of the OSG as to the extraction limit and controverts [the mining corporations'] assertion that no extraction limit exists and, if the same subsists, they [had] not exceeded it.[22]

Hence, this Petition.

Issues

Two questions are posed before us. The first deals with the constitutionality of Section 1, PD 1899 which, according to the mining corporations violates the equal protection clause. They argue that there is no substantial distinction between the miners covered under RA 7076, who can extract as much ore as they can, and those covered under PD 1899 who were imposed an extraction limit.

Another issue concerns the correct interpretation of the 50,000-MT limit. The mining corporations insist on their version of how to compute the extraction.

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20 Id. at 54.
21 Id. at 168-180.
22 Id. at 67.

To them, the computation of Ni-Co ore should be confined strictly to Ni-Co component from which they derive economic value.

Our Ruling

Petitioners are governed by the annual production limit under PD 1899.

Two different laws governing small-scale mining co-exist: PD 1899 and RA 7076.[23] The controversy lies in the apparent conflicting provisions on the definition of small-scale mining under the two laws. Section 1 of PD 1899 defines small-scale mining in this wise:

> Small-scale mining refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore and satisfying the following requisites:
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> 1. The working is artisanal, whether open cast or shallow underground mining, without the use of sophisticated mining equipment;
>
> 2. Minimal investment on infrastructures and processing plant;
>
> 3. Heavy reliance on manual labor; and
>
> 4. Owned, managed or controlled by an individual or entity qualified under existing mining laws, rules and regulations.

On the other hand, under Section 3(b) of RA 7076, small-scale mining refers to 'mining activities which rely heavily on manual labor using simple implements and methods and do not use explosives or heavy mining equipment.' Significantly, this definition does not provide for an annual extraction limit unlike in PD 1899.

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[23] Some of the differences between PD 1899 and RA 7076 as may be inferred from the laws and their respective IRRs, i.e., MRD 1984-41 and DAO No. 92-34: Under the PD, small-scale mining permits (SSMPs) are issued, while in the RA, small-scale mining contracts (SSMCs) are granted in the form of co-production, joint venture, or mineral production sharing agreement. Qualified applicants under the PD are individuals, partnerships and corporations, registered with the SEC, at least 60% Filipino-owned, while those under the RA, only Filipino cooperatives organized by licensed and registered small-scale miners may apply. Under the RA, mining operations shall only be conducted within the areas declared as People's Small Scale Mining Area (PSSMAs), those which are not declared as PSSMAs shall be governed by the PD.

Furthermore, it must be noted that on July 6, 2012, President Benigno Aquino III signed Executive Order 79, Series of 2012, wherein the EO categorically mandates that small-scale mining operations shall be governed by RA 7076. The IRR of EO 79, DAO No. 2012-07, states that small-scale mining permits issued under PD 1899 shall still be recognized until their expiration. This means that thereafter, RA 7076 must be complied with.

DOJ Opinion No. 74, Series of 2006 concluded that as nothing from RA 7076 speaks of an annual production limit, Section 1 of PD 1899 should be considered impliedly repealed by RA 7076, the later law. However, while these two laws tackle the definition of what small-scale mining is, both have different objects upon which the laws shall be applied to. PD 1899 applies to individuals, partnerships and corporations while RA 7076 applies to cooperatives.[24] There are other differences between the two laws, but we cannot hastily conclude that there is an implied repeal because of the omission. Both laws may stand.

Petitioners then construe the omission of the annual production limit in the later law in the sense that small-scale miners granted mining contracts under RA 7076 can now conduct mineral extraction as much as they can while the benefit of unlimited extraction is denied to those granted permits under PD 1899. According to them, such situation creates an invalid classification of small-scale miners under the two laws, hence the attack on Section 1 of PD 1899 as being violative of the equal protection clause.

We do not, however, subscribe to the mining corporations' averment that the 50,000-MTs production limit does not apply to small-scale miners under RA 7076. Recognizing the DENR's mandate to regulate the country's natural resources under EO 192,[25] both PD 1899 and RA 7076 delegated to the DENR, thru its Secretary, the power to promulgate the necessary IRRs to give effect to the said laws.[26]

Significantly, the DENR in the exercise of such power had just recently resolved the question on the production limit in small-scale mining. On July 5, 2007, it issued DMC 2007-07 or "Clarificatory Guidelines in the Implementation of the Small-Scale Mining Laws". By imposing the annual production limit of 50,000 DMT to both SSMPs issued under PD 1899 and Small-Scale Mining Contracts (SSMCs) under RA 7076, the DENR harmonized the two laws, *viz*:

V. Maximum Annual Production

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[24] See note 22.

[25] Relevant provisions of the Executive Order No. 192 provide:

SECTION 4. **Mandate.** The Department shall be the primary government agency responsible for the conservation, management, development, and proper use of the country's environment and natural resources, specifically forest and grazing lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.

x x x x

SECTION 5. **Powers and Functions.** To accomplished its mandate, the Department shall have the following functions:

x x x x

c) Promulgate rules and regulations in accordance with the law governing the exploration, development, conservation, extraction, disposition, use and such other commercial activities tending to cause the depletion and degradation, of our natural resources.

[26] Provided under Section 8 of Presidential Decree No. 1899 and Section 26, par. 2 of Republic Act No. 7076.

> For metallic minerals, the **maximum annual production** under an SSMP/SSMC shall be 50,000 dry metric tons (DMT[s]) of ore, while for nonmetallic minerals, the maximum annual production shall be 50,000 DMT[s] of the material itself, *e.g.*, 50,000 DMT[s] of limestone, 50,000 DMT[s] of silica, or 50,000 DMT[s] of perlite.
>
> The maximum annual production above shall include low-grade and/or marginal ore, and/or minerals or rocks that are intended for sampling and/or metallurgical testing purpose/s."

With the 50,000-MT limit likewise imposed on small-scale miners under RA 7076, the issue raised on the violation of the equal protection clause is moot. The fact is, the DENR treats all small-scale miners equally as the production limit applies to all of them. There is therefore no more reason for the mining corporations to not recognize and comply with the said limitation. It must be stressed that the DENR is the government agency tasked with the duty of managing and conserving the country's resources; it is also the agency vested with the authority to promulgate rules and regulations for the implementation of mining laws.

The DENR, being the agency mandated to protect the environment and the country's natural resources, is authoritative on interpreting the 50,000-MT limit.

MAO No. MRD-41 specifies measuring the 'run-of-mine ore,' meaning the ore as it emerges from the mine, i.e., before treatment.[27] As explained by the DENR-MGB Director, the ore is weighed only in DMT, excluding the water or moisture content. Simply stated, included in the measurement are other materials lumped with the sought-after mineral.

This definition is congruent with RA 7942 or The Philippine Mining Act of 1995. Said law defines "ore" as "naturally occurring substance or material from which a mineral or element can be mined and/or processed for profit."[28] Clearly, the law refers to ore in its unprocessed form, *i.e.*, before the valuable mineral is separated from the ore itself.

Also in Section V of the earlier mentioned DMC-2007-07, the DENR clarified the 50,000-MT limit by differentiating the measurement of metallic minerals from nonmetallic ones. Noticeably, the metallic minerals are conservatively measured compared to nonmetallic or industrial minerals for a

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27 Mining Journal Online, *Mining 101*, http://www.mining-journal.com/knowledge/Mining-101, visited on May 27, 2014.

28 Chapter 1, Section 3 (ak).

reason. Compared to metallic minerals, nonmetals are easily available when mined in their raw/natural state, like limestone. As nonmetallics are produced from natural aggregates, the production limit of 50,000 DMTs will be easily met. On the other hand, metallic minerals, like Ni-Co are not easily available in their pure form since they are sourced from ores which are mined. To extract these metals of economic value, the gangue lumped with them have to be removed by metallurgy. And in order to produce a ton of a metallic mineral sought for, big volumes of gangue will have to be removed. As indicated by the mining corporations' Summary of Shipments,[29] it took 151,612 DMTs of ore to extract only 1,699.66 DMTs of Ni-Co. Thus, 149,912.34 DMTs of ore are considered waste. This means that if we are to subscribe to the mining corporations' interpretation of how to measure mined ore by measuring only the Ni-Co and excluding the gangue, small-scale miners are virtually given the license to continuously collect large volumes of ore until the 50,000 DMTs of Ni-Co limit is met. It must be emphasized that mining, whether small or large-scale, raises environmental concerns. To allow such a scenario will further cause damage to the environment such as erosion and sedimentation, landslides, deforestation, acid rock drainage, etc.[30] As correctly argued by the Solicitor General, extracting millions of DMTs of run-of-mine ore will mean irreversible degradation of the natural resources and possible landslides and flashfloods.

It may be significant to state at this point that while the annual production limit by measuring only the material itself may apply in small-scale nonmetallic mining, the same cannot be true to metal mining for the reasons above stated. Hence, the DENR saw it proper to conservatively measure the production of metallic minerals apparently bearing in mind the more intense impact of such kind of mining to the environment.

Anent the mining corporations' contention that their ECCs specified that they were allowed to extract 50,000 MTs of Ni-Co, such should not be taken literally in the sense that the measurement should only be based on the Ni-Co in their purest form. Their ECCs only meant that they are to mine Ni-Co and not any other minerals. This construction likewise applies to the respective SSMPs given them.

WHEREFORE, premises considered, the Petition is **DENIED**. The July 4, 2007 Decision and September 14, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 97127 are hereby **AFFIRMED *in toto***.

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29 *Rollo*, p. 103.

30 In the UP Philippine Law Journal article entitled 'Legal Responses to the Impact of Mining' authored by Antonio GM La Vina, Alaya M. De Leon, and Gregorio P. Bueta, see http://plj.upd.edu.ph/legal-responses-to-the-impact-of-mining/, other negative environmental impacts of mining exploration, operation, and ore extraction were mentioned such as disruption or loss of natural habitats, forest land conversion/loss, decline in carbon sequestration capacity, reduced slope stability, diversion of surface or groundwater, reduced or erratic stream flows, clogged stream channels, potential acid rock generation, and contamination of surface waterways.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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