Republic of the Philippines
Supreme Court
Manila

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**G.R. No. 199422**
	Present:
	SERENO, *C. J.*,
	CARPIO,
	VELASCO, JR.,
	LEONARDO-DE CASTRO,
	BRION,
	PERALTA,
	BERSAMIN,
- versus -	DEL CASTILLO,*
	PEREZ,
	MENDOZA,
	REYES,
	PERLAS-BERNABE,
	LEONEN,
	JARDELEZA,* and
	CAGUIOA, *JJ.*
KEPCO ILIJAN CORPORATION, Respondent.	**Promulgated:** June 21, 2016

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DECISION

PERALTA, *J.*:

This is a petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Resolutions[1] dated July 27, 2011[2] and November 15, 2011[3] of the Court of Tax Appeals (*CTA*) *En Banc*.

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* On official leave.

* No part.

1 Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, concurring.

2 *Rollo,* pp. 9-20.

3 *Id.* at 29-32.

The facts follow.

For the first[4] and second[5] quarters of the calendar year 2000, respondent filed its Quarterly value-added tax (*VAT*) returns with the Bureau of Internal Revenue (*BIR*). It also filed the Application for Zero Rated Sales for calendar year 2000 which was duly approved by the BIR.[6]

Thereafter, respondent filed with the BIR its claim for refund in the amount of ₱449,569,448.73 representing input tax incurred for the first and second quarters of the calendar year 2000 from its importation and domestic purchases of capital goods and services preparatory to its production and sales of electricity to the National Power Corporation.[7]

Petitioner did not act upon respondent's claim for refund or issuance of tax credit certificate for the first and second quarters of the calendar year 2000. Consequently, respondent filed a Petition for Review[8] on March 21, 2002, and an Amended Petition for Review[9] on September 12, 2003.

In her Answer,[10] petitioner alleged the following Special and Affirmative Defenses: (1) respondent is not entitled to the refund of the amounts prayed for; (2) the petition was prematurely filed for respondent's failure to exhaust administrative remedies; (3) respondent failed to show that the taxes paid were erroneously or illegally collected; and (4) respondent has no cause of action.

After the issues were joined, trial on the merits ensued.

Respondent, thereafter, filed its Memorandum on September 1, 2008. For failure of petitioner to file the required Memorandum despite notice, the CTA First Division issued a Resolution[11] dated September 12, 2008 submitting the case for decision.

On September 11, 2009, the CTA First Division rendered a Decision,[12] the dispositive portion[13] of which reads as follows:

> IN VIEW OF THE FOREGOING, THIS Court finds petitioner entitled to a refund in the amount of ₱443,447,184.50, representing unutilized input VAT paid on its domestic purchases and importation of

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4 CTA Records, p. 14.
5 *Id.* at 16.
6 *Id.* at 18.
7 *Id.* at 19-35. See also *rollo*, p. 141.
8 *Id.* at 1-9.
9 *Id.* at 427-435.
10 *Id.* at 44-45.
11 *Id.* at 1067.
12 *Rollo*, pp. 134-148. Penned by Associate Justice Caesar A. Casanova, with Associate Justice Lovell R. Bautista concurring, and Presiding Justice Ernesto D. Acosta dissenting.
13 *Id.* at 147.

capital goods for the first and second quarters of 2000, as computed below:

Amount of Input VAT Claim		₱449,569,448.73
Less:	Input VAT Pertaining to Non-Capital Goods	706,328.22
Input VAT Claim Pertaining to Capital Goods Purchases		₱448,863,120.51
Less:	Not Properly Substantiated Input VAT	
	Per ICPA's Findings	45,878.55
	Per this Court's Further Verification	5,370,057.46
Refundable Input VAT on Capital Goods Purchases		**₱443,447,184.50**

There being no motion for reconsideration filed by the petitioner, the abovementioned decision became final and executory and a corresponding Entry of Judgment was issued on October 10, 2009. Thus, on February 16, 2010, the Court issued a Writ of Execution,[14] the pertinent portion of which reads as follows:

> You are hereby ORDERED to REFUND in favor of the petitioner KEPCO ILIJAN CORPORATION, the amount of ₱443,447,184.50 representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000, pursuant to the Decision of this Court, promulgated on September 11, 2009, which has become final and executory on October 10, 2009, by virtue of the Entry of Judgment issued on said date.
>
> The Sheriff of this Court is hereby directed to see to it that this Writ is carried out by the Respondent and/or his agents, and shall make the corresponding return/report thereon within thirty (30) days after receipt of the Writ.
>
> SO ORDERED.

Petitioner alleges that she learned only of the Decision and the subsequent issuance of the writ of March 7, 2011 when the Office of the Deputy Commissioner for Legal and Inspection Group received a Memorandum from the Appellate Division of the National Office recommending the issuance of a Tax Credit Certificate in favor of the respondent in the amount of ₱443,447,184.50.

Accordingly, on April 11, 2011 petitioner filed a petition for annulment of judgment with the CTA *En Banc*, praying for the following reliefs: (1) that the Decision dated September 11, 2009 of the CTA First Division in CTA Case No. 6412 be annulled and set aside; (2) that the Entry of Judgment on October 10, 2009 and Writ of Execution on February 16, 2010 be nullified; and (3) that the CTA First Division be directed to re-open CTA Case No. 6412 to allow petitioner to submit her memoranda setting forth her substantial legal defenses.

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14 *Id.* at 151.

In opposition, respondent filed its Motion to Deny Due Course (To The Petition for Annulment of Judgment), arguing, among others, that petitioner is not lawfully entitled to the annulment of judgment on the ground that the CTA *En Banc* is bereft of jurisdiction to entertain annulment of judgments on the premise that the Rules of Court, Republic Act No. (*RA No.*) 9282,[15] and the Revised Rules of the Court of Tax Appeals do not expressly provide a remedy on annulment of judgments.

On July 27, 2011, the CTA *En Banc* issued a Resolution[16] dismissing the petition. Petitioner filed a motion for reconsideration, but the same was denied in a Resolution[17] dated November 15, 2011.

Hence, this petition.

Petitioner raises the following arguments to support her petition:

I

THE COURT OF TAX APPEALS (EN BANC) HAS JURISDICTION TO TAKE COGNIZANCE OF THE PETITION FOR ANNULMENT OF JUDGMENT.

II

THE NEGLIGENCE COMMITTED BY PETITIONER'S COUNSEL IS GROSS, PALPABLE AND CONSTITUTES TOTAL ABANDONMENT OF PETITIONER'S CAUSE WHICH IS TANTAMOUNT TO EXTRINSIC FRAUD.

III

THE COURT OF TAX APPEALS (*FIRST DIVISION*) HAS NO JURISDICTION OVER THE ORIGINAL PETITION FILED BY RESPONDENT.

IV

PETITIONER IS NOT BARRED BY LACHES FROM ASSAILING THE JURISDICTION OF THE COURT OF TAX APPEALS (*FIRST DIVISION*) OVER THE PETITION FILED BY RESPONDENT.[18]

Prefatorily, we first pass upon the issue of whether the CTA *En Banc* has jurisdiction to take cognizance of the petition for annulment of judgment filed by petitioner.

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15 *AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND OTHER PURPOSES.*

16 *Supra* note 2.

17 *Supra* note 3.

18 *Rollo*, p. 44.

Annulment of judgment, as provided for in Rule 47 of the Rules of Court, is based only on the grounds of extrinsic fraud and lack of jurisdiction. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.[19] It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.[20]

Annulment of judgment involves the exercise of original jurisdiction, as expressly conferred on the Court of Appeals by Batas Pambansa Bilang (*BP Blg.*) 129, Section 9(2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47 of the Rules of Court, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.

But the law and the rules are silent when it comes to a situation similar to the case at bar, in which a court, in this case the Court of Tax Appeals, is called upon to annul its own judgment. More specifically, in the case at bar, the CTA sitting *en banc* is being asked to annul a decision of one of its divisions. However, the laws creating the CTA and expanding its jurisdiction (RA Nos. 1125 and 9282) and the court's own rules of procedure (the Revised Rules of the CTA) do not provide for such a scenario.

It is the same situation among other collegial courts. To illustrate, the Supreme Court or the Court of Appeals may sit and adjudicate cases in divisions consisting of only a number of members, and such adjudication is already regarded as the decision of the Court itself.[21] It is provided for in the Constitution, Article VIII, Section 4(1) and BP Blg. 129, Section 4, respectively. The divisions are not considered separate and distinct courts but are divisions of one and the same court; there is no hierarchy of courts within the Supreme Court and the Court of Appeals, for they each remain as one court notwithstanding that they also work in divisions.[22] The Supreme Court sitting *en banc* is not an appellate court *vis-a-vis* its divisions, and it exercises no appellate jurisdiction over the latter.[23] As for the Court of

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19 *Macalalag v. Ombudsman,* 468 Phil. 918, 923 (2004).

20 *Nudo v. Hon. Caguioa,et al.,* 612 Phil. 517, 522 (2009).

21 See *Land Bank of the Philippines v. Suntay,* 678 Phil. 879, 912 (2011).

22 *Id.*

23 The command in *Firestone Ceramics Inc. v. Court of Appeals,* Dissenting Opinion of then Associate Justice Minerva Gonzaga-Reyes, 389 Phil. 810, 822 (2000) that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*" (CONSTITUTION, Art. VIII, Section 4[3]) does not refer to the modification or reversal of a ruling in a specific case, but to a doctrine or legal principle which reversal, in any case, applies only prospectively or to future cases. As stated in *Spouses Benzonan v. Court of Appeals,* G.R. Nos. 97973 & 97998, January 27, 1992; 205 SCRA 515, *Heirs of Gamboa v. Teves,* 696 Phil. 276 (2012); Velasco, Jr.,

Appeals *en banc*, it sits as such only for the purpose of exercising administrative, ceremonial, or other non-adjudicatory functions.[24]

Thus, it appears contrary to these features that a collegial court, sitting *en banc*, may be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court. In the process, it also betrays the principle that judgments must, at some point, attain finality. A court that can revisit its own final judgments leaves the door open to possible endless reversals or modifications which is anathema to a stable legal system.

Thus, the Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto provide for no instance in which the *en banc* may reverse, annul or void a *final* decision of a division. Verily, the Revised Rules of the CTA provide for no instance of an annulment of judgment at all. On the other hand, the Rules of Court, through Rule 47, provides, with certain conditions, for annulment of judgment done by a superior court, like the Court of Appeals, against the final judgment, decision or ruling of an inferior court, which is the Regional Trial Court, based on the grounds of extrinsic fraud and lack of jurisdiction. The Regional Trial Court, in turn, also is empowered to, upon a similar action, annul a judgment or ruling of the Metropolitan or Municipal Trial Courts within its territorial jurisdiction. But, again, the said Rules are silent as to whether a collegial court sitting *en banc* may annul a final judgment of its own division.

As earlier explained, the silence of the Rules may be attributed to the need to preserve the principles that there can be no hierarchy within a collegial court between its divisions and the *en banc,* and that a court's judgment, once final, is immutable.

A direct petition for annulment of a judgment of the CTA to the Supreme Court, meanwhile, is likewise unavailing, for the same reason that there is no identical remedy with the High Court to annul a final and executory judgment of the Court of Appeals. RA No. 9282, Section 1 puts the CTA on the same level as the Court of Appeals, so that if the latter's final judgments may not be annulled before the Supreme Court, then the CTA's own decisions similarly may not be so annulled. And more importantly, it has been previously discussed that annulment of judgment is an original action, yet, it is not among the cases enumerated in the Constitution's Article VIII, Section 5 over which the Supreme Court exercises original jurisdiction. Annulment of judgment also often requires an adjudication of facts, a task that the Court loathes to perform, as it is not a trier of facts.[25]

J., dissenting.

24 B.P. Blg. 129, Sec. 4.

25 *INC Shipmanagement, Inc. v. Moradas,* 724 Phil. 374 (2014).

Nevertheless, there will be extraordinary cases, when the interest of justice highly demands it, where final judgments of the Court of Appeals, the CTA or any other inferior court may still be vacated or subjected to the Supreme Court's modification, reversal, annulment or declaration as void. But it will be accomplished not through the same species of original action or petition for annulment as that found in Rule 47 of the Rules of Court, but through any of the actions over which the Supreme Court has original jurisdiction as specified in the Constitution, like 65 of the Rules of Court.

Hence, the next query is: Did the CTA *En Banc* correctly deny the petition for annulment of judgment filed by petitioner?

As earlier discussed, the petition designated as one for annulment of judgment (following Rule 47) was legally and procedurally infirm and, thus, was soundly dismissed by the CTA *En Banc* on such ground. Also, the CTA could not have treated the petition as an appeal or a continuation of the case before the CTA First Division because the latter's decision had become final and executory and, thus, no longer subject to an appeal.

Instead, what remained as a remedy for the petitioner was to file a petition for *certiorari* under Rule 65, which could have been filed as an original action before this Court and not before the CTA *En Banc*. *Certiorari* is available when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, such as in the case at bar. Since the petition below invoked the gross and palpable negligence of petitioner's counsel which is allegedly tantamount to its being deprived of due process and its day in court as party-litigant[26] and, as it also invokes lack of jurisdiction of the CTA First Division to entertain the petition filed by private respondent since the same allegedly fails to comply with the reglementary periods for judicial remedies involving administrative claims for refund of excess unutilized input VAT under the National Internal Revenue Code (*NIRC*),[27] which periods it claims to be jurisdictional, then the proper remedy that petitioner should have availed of was indeed a petition for *certiorari* under Rule 65, an original or independent action premised on the public respondent having acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. However, since a *certiorari* petition is not a continuation of the appellate process borne out of the original case but is a separate action focused on actions that are in excess or wanting of jurisdiction,[28] then it cannot be filed in the same tribunal whose actions are being assailed but is instead cognizable by a higher tribunal which, in the case of the CTA, is this Court.[29] In the case involving petitioner, the petition could have been filed directly with this Court, even without any need to file a motion for

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26 *Rollo*, pp. 55-71.
27 *Id.* at 71-76.
28 *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014, 715 SCRA 182.
29 RA 1125, as amended by RA 9282, Sec. 19.

reconsideration with the CTA division or *En Banc*, as the case appears to fall under one of the recognized exceptions to the rule requiring such a motion as a prerequisite to filing such petition.[30]

The office of a *certiorari* petition is detailed in the Rules of Court, thus:

> Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions **has acted without or in excess of its or his jurisdiction,** or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

The writ of *certiorari* is an "extraordinary remedy" that is justified in the "absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law."[31] It may be given due course as long as petitioners allege that they had no appeal or any other efficacious remedy against the appellate court's decision.[32]

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30 The exceptions to the rule of filing such a motion prior to a resort to a petition for *certiorari* are:
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 petition 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 was *ex parte* or in which the petitioner had no opportunity to object; and
i) where the issue raised is one purely of law or **public interest is involved.** (*Rapid Manpower Consultants Inc. v. De Guzman,* G.R. No. 187418, September 28, 2015.)

31 *Davao Merchant Marine Academy v. Court of Appeals (Fifth Division),* 521 Phil. 524, 530 (2006).

32 *Id.*

Direct resort to this Court *via* a *certiorari* petition on the same grounds as in this case has jurisprudential precedents. In one, We held that when the appellate court's decision is void for lack of due process, the filing of a petition for *certiorari* with this court without a motion for reconsideration is justified.[33] This Court also has held that a petition for *certiorari* under Rule 65 of the Rules of Court is available when the proceedings in question amount to depriving the petitioner his day in court.[34] It is true that *certiorari* is not a substitute for appeal, but exempt from this rule is a case when the trial court's decision or resolution was issued without jurisdiction or with grave abuse of discretion.[35] ***When a fraudulent scheme prevents a party from having his day in court or from presenting his case, the fraud is one that affects and goes into the jurisdiction of the court.***[36] A question as to lack of jurisdiction of the respondent tribunal or agency is properly the office of a petition for *certiorari*.

In any event, petitioner's failure to avail of this remedy and mistaken filing of the wrong action are fatal to its case and renders and leaves the CTA First Division's decision as indeed final and executory. By the time the instant petition for review was filed by petitioner with this Court on December 9, 2011, more than sixty (60) days have passed since petitioner's alleged discovery (on March 7, 2011) of its loss in the case as brought about by the alleged negligence or fraud of its counsel.

Thus, the current discussion serves no further purpose other than as merely a future guide to the bench and the bar when confronted with a similar situation.

Although in select cases, this Court has asseverated that "it is always within its power to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it" and that the Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion.[37] We have also equally stressed that strict compliance with the rules of procedure is essential to the administration of justice.[38]

In this case, even if there was allegedly a deliberate effort from petitioner's counsel to refuse to participate, despite notice, in the conduct of the case after the filing of the Answer right up to the issuance of the Writ of

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33 *People v. Duca,* 618 Phil. 154, 169 (2009).

34 See *Rural Bank of Calinog (Iloilo) Inc. v. Court of Appeals*, 501 Phil. 387, 396 (2005).

35 *Id.*

36 See *Encinares v. Achero,* 613 Phil. 391, 404 (2009), quoting *Republic v. Guerrero,* 520 Phil. 296, 309 (2006).

37 *Ginete v. Court of Appeals,* 357 Phil. 36, 52 (1998), citing *C. Viuda de Ordoveza v. Raymundo,* 63 Phil. 275 (1936).

38 *Tan v. Planters Products Inc.,* 573 Phil. 416, 428 (2008).

Execution against petitioner,[38] equally apparent is the failure of petitioner and/or petitioner's responsible subordinates to supervise the said counsel as well as the conduct and progress of the case. Not only was there an apparent negligence of counsel,[39] which binds the client, there likewise appears to have been lapses on the part of the client – the petitioner and the petitioner's responsible subordinates – themselves. Equally oft-repeated is the rule that service made upon the present counsel of record at his given address is service to the client.[40] Thus, it is harder to justify a relaxation of the rules when the litigant itself suffers from inexcusable neglect. It is an oft-repeated pronouncement that clients should take the initiative of periodically checking the progress of their cases, so that they could take timely steps to protect their interest.[41] Failing such, clients are left with more recourse against the consequence of their and their counsel's omissions.

To prevent similar disadvantageous incidents against the government in the future, the BIR is **DIRECTED** to **ADOPT** mechanisms, procedures, or measures that can effectively monitor the progress of cases being handled by its counsels. Likewise, the Ombudsman is **DIRECTED** to **CONDUCT** an in-depth investigation to determine who were responsible for the apparent mishandling of the present case that resulted in the loss of almost half-a-billion pesos, which the government could have used to finance its much needed infrastructure, livelihood projects, and other equally important projects.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. The assailed Resolutions dated July 27, 2011 and November 15, 2011 of the Court of Tax Appeals *En Banc* are **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice

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38 *Rollo*, pp. 40-42.
39 *Macondray & Co., Inc. v. Provident Insurance Corporation*, 487 Phil. 158, 168 (2004).
40 *Id.*
41 *Id.*

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

On official leave
MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

No part
FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
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.

MARIA LOURDES P. A. SERENO
Chief Justice