

PARTIDO NG MANGGAGAWA (PM) AND BUTIL FARMERS PARTY (BUTIL), PETITIONERS, VS. THE HON. COMMISSION ON ELECTIONS (COMELEC), REPRESENTED BY ITS HON. CHAIRMAN BENJAMIN ABALOS, SR., R...

G.R. NO. 164702. March 15, 2006

Ponente: PUNO, J.

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PUNO, J.:

The petition at bar involves the formula for computing the additional seats due, if any, for winners in party-list elections.

The antecedents are undisputed.

Several party-list participants sent queries to the respondent COMELEC regarding the formula to be adopted in computing the additional seats for the party-list winners in the May 10, 2004 elections. In response, the respondent Commission issued Resolution No. 6835, [1] adopting the simplified formula of "one additional seat per additional two percent of the total party-list votes." The resolution reads:

Considering that the simplified formula has long been the one adopted by the Commission and is now the formula of choice of the Supreme Court in its latest resolution on the matter, the Commission RESOLVED, as it hereby RESOLVES, to adopt the simplified formula of one additional seat per additional two percent of the total party-list votes in the proclamation of the party-list winners in the coming May 10, 2004 National and Local Elections. [2] (emphasis supplied)

In finding that this simplified formula is the "formula of choice of the Supreme Court," respondent Commission quoted the memorandum of Commissioner Mehol K. Sadain, Commissioner-In-Charge for Party-List concerns, viz:

By way of review, following is a highlight of the legal discourse on the two [percent] vote requirement for the party-list system and the corollary issue on additional seat allocation.

Section 11(b) and Section 12 of R.A. 7941 (Party-List System Act) provide that "the parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each, provided that those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes xxx. The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization or coalition as against the total nationwide votes cast for the party-list system."

These provisions of [the] statute were transformed into the following formulas by the Supreme Court in *Veterans Federation Party vs. COMELEC* (G.R. Nos. 136781, 136786 & 136795, October 6, 2000).

For the party-list candidate garnering the highest number of votes, the following formula was adopted:

Number of votes of first party Proportion of votes of first

----- = party relative to total votes

Total votes for party-list system for the party-list system

And for the additional seats of other parties who reached the required two percent mark, the following formula applies:

Additional seats

for concerned =

party

No. of votes of

concerned party

----- x

No. of votes of first party

No. of additional

seats allocated to

the first party

The applicability of these formulas was reiterated in the June 25, 2003 Resolution of the Supreme Court in *Ang Bagong Bayani-OFW Labor Party vs. COMELEC, et al.* (G.R. No. 147589) and *Bayan Muna vs. COMELEC, et al.* (G.R. No. 147613) penned by Justice Artemio Panganiban, wherein the Court declared that party-list BUHAY was not entitled to an additional seat even if it garnered 4.46 [percent] of the total party-list votes, contrary to BUHAY's contention which was based on the COMELEC simplified formula of one additional seat per an additional two percent of the total party-list votes.

However, on November 10, 2003, [3] the Supreme Court promulgated a Resolution in the same case, this time penned by Chief Justice Hilario Davide, Jr., granting BUHAY's motion for reconsideration of the June 25, 2003 Resolution, to wit:

It is thus established in the Resolution of 25 June 2003 that, like APEC, BUTIL, CIBAC and AKBAYAN, BUHAY had obtained more than four percent (4%) of the total number of votes validly cast for the party-list system and obtained more than 0.50 for the additional seats. Accordingly, just like the first four whose additional nominees are now holding office as member of the House of Representatives, BUHAY should be declared entitled to one additional seat.

Effectively, the Supreme Court, with Justices Jose Vitug and Panganiban registering separate opinions, adopted the simplified COMELEC formula of one additional seat per additional two percent of the total party-list votes garnered when it declared BUHAY entitled to one additional seat and proceeded to order the COMELEC to proclaim BUHAY's second nominee. [4] (emphasis supplied)

Party-List Canvass Report No. 20 [5] showed that the total number of votes cast for all the party-list participants in the May 10, 2004 elections was 12,721,952 and the following parties, organizations and coalitions received at least two percent (2%) of the total votes cast for the party-list system, to wit:

Rank Party-List Group Votes Received Percentage to Total Votes Cast (%)

1 Bayan Muna (BAYAN MUNA) 1,203,305 9.4585

2 Association of Philippine Electric Cooperatives (APEC) 934,995 7.3495

3 Akbayan! Citizen's Action Party (AKBAYAN!) 852,473 6.7008

- 4 Buhay Hayaan Yumabong (BUHAY) 705,730 5.5473
- 5 Anakpawis (AP) 538,396 4.2320
- 6 Citizen's Battle Against Corruption (CIBAC) 495,193 3.8924
- 7 Gabriela Women's Party (GABRIELA) 464,586 3.6518
- 8 Partido ng Manggagawa (PM) 448,072 3.5220
- 9 Butil Farmers Party (BUTIL) 429,259 3.3742
- 10 Alliance of Volunteer Educators (AVE) 343,498 2.7000
- 11 Alagad (ALAGAD) 340,977 2.6802
- 12 Veterans Freedom Party (VFP) 340,759 2.6785
- 13 Cooperative Natcco Network Party (COOP-NATCCO) 270,950 2.1298
- 14 Anak Mindanao (AMIN) 269,750 2.1204
- 15 Ang Laban ng Indiginong Filipino (ALIF) 269,345 2.1172
- 16 An Waray (AN WARAY) 268,164 2.1079

Based on the simplified formula, respondent Commission issued Resolution No. NBC 04-004 [6] proclaiming the following parties, organizations and coalition as winners and their qualified nominees as representatives to the House of Representatives:

BAYAN MUNA (BAYAN MUNA) — 3 seats

1. Saturnino C. Ocampo
2. Teodoro A. Casiño, Jr.
3. Joel G. Virador

ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES (APEC) — 3 seats

1. Edgar L. Valdez
2. Ernesto G. Pablo
3. Sunny Rose A. Madamba

AKBAYAN! CITIZEN'S ACTION PARTY (AKBAYAN!) — 3 seats

1. Loreta Ann P. Rosales
2. Mario Joyo Aguja
3. Ana Theresa Hontiveros-Baraquel

BUHAY HAYAAN YUMABONG (BUHAY) — 2 seats

1. Rene M. Velarde
2. Hans Christian M. Señeres

ANAKPAWIS (AP) — 2 seats

1. Crispin B. Beltran
2. Rafael V. Mariano

CITIZEN'S BATTLE AGAINST CORRUPTION (CIBAC) — 1 seat

Emmanuel Joel J. Villanueva

GABRIELA WOMEN'S PARTY (GABRIELA) — 1 seat

Liza Largoza-Maza

PARTIDO NG MANGGAGAWA (PM) — 1 seat

Renato B. Magtubo

BUTIL FARMERS PARTY (BUTIL) — 1 seat

Benjamin A. Cruz

ALLIANCE OF VOLUNTEER EDUCATORS (AVE) — 1 seat

Eulogio R. Magsaysay

ALAGAD (ALAGAD) — 1 seat

x x x

VETERANS FREEDOM PARTY (VFP) — 1 seat

Ernesto S. Gidaya

COOPERATIVE NATCCO NETWORK PARTY (COOP-NATCCO) — 1 seat

Guillermo P. Cua

AN WARAY (AN WARAY) — 1 seat

Florencio G. Noel

ANAK MINDANAO (AMIN) — 1 seat

Mujiv S. Hataman [7]

Subsequently, ALIF was also proclaimed as "duly-elected party-list participant and its nominee, Hadji Acmad M. Tomawis, as elected representative to the House of Representatives." [8]

On June 22, 2004, petitioners PM and BUTIL, together with CIBAC, filed a Joint Motion for Immediate Proclamation [9] with the respondent Commission en banc. They prayed that they be declared as entitled to one (1) additional seat each and their respective second nominees be proclaimed as duly elected members of the House of Representatives. As basis, they cited the formula used by the Court in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*, [10] viz:

Additional Seats

Votes Cast for

Qualified Party

= ----- x

Votes Cast for First Party

Allotted Seatsfor

First Party

On June 25, 2004, petitioners and CIBAC filed a Supplement to the Joint Motion (For Immediate Proclamation) [11] to justify their entitlement to an additional seat, as follows:

5. To compute the additional seats that movants are entitled to using the Veterans formula of the Supreme Court in the aforesaid *Ang Bagong Bayani-OFW Labor Party* and *Bayan Muna* cases, and Party List Canvass Report No. 20, the following process is done: Bayan Muna is the "First Party" with 1,203,305 votes. To determine the number of seats allocated to the first party, we use the Veterans formula, to wit:

Number of votes
of first party

Total votes for
party-list system

=

Proportion of votes
of first party relative
to total votes for
party-list system

Applying this formula, we arrive at 9.4585%

1,203,305

12,721,952

=

9.4585%

6. Having obtained 9.4585%, the first party, Bayan Muna, is allotted three (3) seats.

7. The number of additional seats that the movants are entitled to are determined as follows:

Additional Seats =

Votes Cast for
Qualified Party

----- x

Votes Cast for
First Party

Allotted Seats
for First Party

For BUTIL, the computation is as follows:

Additional Seats

=

Votes Cast for
Qualified Party

----- x

Votes Cast for
First Party

Allotted Seats
for First Party

For CIBAC, the computation is :

Additional Seats

=

495,193
 ----- x 3 =
 1,203,305 1.2345

For PM, the computation is :

Additional Seats

=

448,072
 ----- x 3 =
 1,203,305 1.1171

8. All the foregoing results are greater than one (1); therefore, the movant-party list organizations are entitled to one (1) additional seat each. [12]

On July 31, 2004, respondent Commission en banc, issued Resolution No. NBC 04-011, [13] viz:

This pertains to the 06 July 2004 Memorandum of the Supervisory Committee, National Board of Canvassers, submitting its comment/recommendation on the petition filed by Luzon Farmers Party (BUTIL), Citizens Battle Against Corruption (CIBAC), Partido ng Manggagawa (PM) and Gabriela Women's Party for additional seat and to immediately proclaim their respective second nominees to the House of Representatives, and the letter of Atty. Ivy Perucho, Legal counsel of the CIBAC, relative to the Joint Motion for Immediate Proclamation filed by BUTIL, CIBAC, PM requesting to calendar for resolution the said Joint Motion.

The Memorandum of the Supervisory Committee reads:

"This has reference to the Urgent Motion for Resolution (re: Joint Motion for Immediate Proclamation dated 22 June 2004) filed on July 1, 2004 by movants Luzon Farmers Party (BUTIL), Citizens Battle Against Corruption (CIBAC) and Partido ng Manggagawa (PM), NBC Case No. 04-197 (195) and a similar motion filed by party-list Gabriela Women's Party (NBC No. 04-200) through counsel, praying to declare that the herein movants are entitled to one (1) additional seat each, and to immediately proclaim the second nominees, to wit: x x xThe Supreme Court, in its latest Resolution promulgated on November 10, 2003 (sic) in Ang Bagong Bayani-OFW Labor Party vs. Comelec, et al. (G.R. No. 147589) and Bayan Muna vs. Comelec, et al. (G.R. No. 147613), laid down a simplified formula of one additional seat per additional two (2) percent of the total party list votes. The same simplified formula was adopted by the Commission in its Resolution No. 6835 promulgated 08 May 2004, to quote: "The additional seats of other parties who reached the required two percent mark, the following formula applies:

No. of votes of concerned party

Additional seat nona for concerned party = -----x No. of additional seats allocated to the first party

No. of votes of first party

The aforementioned party-list organizations have not obtained the required additional two (2) percent of the total party-list votes for them to merit an additional seat. For your Honors' consideration." x x x

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to direct the Supervisory Committee to cause the re-tabulation of the votes for Citizens Battle Against Corruption (CIBAC), Luzon Farmers Party (BUTIL), Partido ng Manggagawa (PM) and Gabriela Women's Party (Gabriela) and to submit its comment/recommendation, together with the tabulated figures of the foregoing parties, for appropriate action of the Commission.

Let the Supervisory Committee implement this resolution and to furnish copies hereof to the parties concerned for their information and guidance.

SO ORDERED. [14] (emphases supplied)

For failure of the respondent Commission to resolve the substantive issues raised by petitioners and to cause the re-tabulation of the party-list votes despite the lapse of time, petitioners PM and BUTIL filed the instant petition on August 18, 2004. They seek the issuance of a writ of mandamus to compel respondent Commission: a) to convene as the National Board of Canvassers for the Party-List System; b) to declare them as entitled to one (1) additional seat each; c) to immediately proclaim their respective second nominees; d) to declare other similarly situated party-list organizations as entitled to one (1) additional seat each; and e) to immediately proclaim similarly situated parties' second nominees as duly elected representatives to the House of Representatives. [15] They submit as sole issue:

WHETHER OR NOT RESPONDENT COMELEC EN BANC, AS THE NATIONAL BOARD OF CANVASSERS FOR THE PARTY-LIST SYSTEM, COULD BE COMPELLED BY THE HONORABLE COURT TO MECHANICALLY APPLY THE FORMULA STATED IN ITS 25 JUNE 2003 RESOLUTION REITERATED IN THE 20 NOVEMBER 2003 RESOLUTION IN ANG BAGONG BAYANI CASES IN THE DETERMINATION OF QUALIFIED PARTY-LIST ORGANIZATIONS AND IN THE PROCLAMATION OF THEIR RESPECTIVE NOMINEES. [16]

We shall first resolve the procedural issues. Respondent Commission, through the Office of the Solicitor General, submits that petitioners' recourse to a petition for mandamus with this Court is improper. It raises the following procedural issues: (a) the proper remedy from the assailed resolution of the respondent Commission is a petition for certiorari under Rule 65 of the Rules of Court; (b) the instant action was filed out of time; and (c) failure to file a motion for reconsideration of the assailed resolution with the respondent Commission is fatal to petitioners' action. [17]

In assailing petitioners' recourse to a petition for mandamus, respondent Commission relies on Section 7, Article IX(A) of the 1987 Constitution which provides that "any decision, order or ruling" of the respondent Commission "may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof." It contends that in *Aratuc v. COMELEC* [18] and *Dario v. Mison*, [19] this provision was construed as the special civil action of certiorari under Rule 65 and not the appeal by certiorari under Rule 45. Respondent Commission further contends that its duty to proclaim the second nominees of PM and BUTIL is not ministerial but discretionary, hence, it is not subject to the writ of mandamus.

The arguments fail to impress.

Under the Constitution, this Court has original jurisdiction over petitions for certiorari, prohibition and mandamus.[20] We have consistently ruled that where the duty of the respondent Commission is ministerial, mandamus lies to compel its performance. [21] A purely ministerial act, as distinguished from a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done.[22]

The case at bar is one of mandamus over which this Court has jurisdiction for it is respondent Commission's ministerial duty to apply the formula as decided by this Court after interpreting the existing law on party-list representation. It is given that this Court has the ultimate authority to interpret laws and the Constitution.[23] Respondent Commission has no discretion to refuse enforcement of any decision of this Court under any guise or guile.

In any event, it is the averments in the complaint, and not the nomenclature given by the parties, that determine the nature of the action.[24] Though captioned as a Petition for Mandamus, the same may be treated as a petition for certiorari and mandamus considering that it alleges that the respondent Commission acted contrary to prevailing jurisprudence, hence, with grave abuse of discretion and without jurisdiction. In previous rulings, [25] we have treated differently labeled actions as special civil actions for certiorari under Rule 65 for reasons such as "justice, equity and fairplay" [26] and "novelty of the issue presented and its far-reaching effects." [27] The petition at bar involves the rightful representation in the House of Representatives of the marginalized groups by the party-list winners and their constitutional claim merits more than a disposition based on thin technicality.

Next, respondent Commission contends that the petition at bar was filed belatedly. Under Article IX(A), Section 7 of the Constitution and Rule 64, Section 3 of the Rules of Court, the instant petition must be filed within thirty (30) days from receipt of the notice of the decision, order or ruling to be reviewed. Since more than 30 days have lapsed from the time PM and BUTIL allegedly received notice of respondent Commission's Resolution No. 6835, it is urged that the instant petition was filed out of time. [28]

Again, the contention is without merit.

We have interpreted Article IX(A), Section 7 of the Constitution and Rule 64, Section 3 of the Rules of Court to mean final orders, rulings and decisions of the respondent Commission rendered in the exercise of its adjudicatory or quasi-judicial powers. [28] Before resolving whether Resolution No. 6835 was rendered in the exercise of respondent Commission's adjudicatory or quasi-judicial powers, we recapitulate the pertinent events.

On May 8, 2004, respondent Commission issued Resolution No. 6835. On June 2, 2004, it also issued Resolution No. NBC 04-004 holding petitioners entitled to only one (1) nominee each on the basis of Resolution No. 6835. On June 22, 2004, petitioners filed a Joint Motion for Immediate Proclamation with party-list co-participant CIBAC, claiming entitlement to an additional seat using the formula stated in Ang Bagong Bayani. Thereafter, they filed their Supplement to the Joint Motion (For Immediate Proclamation). On July 1, 2004, they filed an Urgent Motion for Resolution (Re: Joint Motion for Immediate Proclamation dated 22 June 2004) and again, on July 12, 2004, they filed their Motion to Resolve (Re: Joint Motion for Immediate Proclamation filed on 22 June 2004). In response, respondent Commission en banc issued Resolution No. NBC 04-011 quoted above, which directed the Supervisory Committee "to cause the re-tabulation of the votes" of CIBAC, GABRIELA and petitioners PM and BUTIL. The resolution referred to the Memorandum of the Supervisory Committee which adopted the simplified formula in Resolution No. 6835. Without further ado, petitioners BUTIL and PM filed the instant petition on August 18, 2004 or eighteen (18) days after the promulgation of Resolution No. NBC 04-011. Clearly, the instant petition was timely filed. We hold that Resolution No. 6835 was not rendered in the exercise of respondent COMELEC's quasi-judicial powers. Its issuance was not brought about by a matter or case filed before the respondent Commission. Rather, it was issued by the respondent Commission in the exercise of its administrative function to enforce and administer election laws to ensure an orderly election.

Finally, respondent Commission contends that petitioners' failure to file a motion for reconsideration of Resolution No. 6835 is fatal.

Again, the argument is without merit.

Under Rule 13, Section 1(d) of the COMELEC Rules of Procedure, a motion for reconsideration of an en banc ruling, order or decision of the respondent Commission is not allowed. Moreover, the issue of what formula applies in determining the additional seats to be allocated to party-list winners is a pure question of law that is a recognized exception to the rule on exhaustion of administrative remedies. [30]

We shall now resolve the substantive issue: the formula for computing the additional seats due, if any, for winners in party-list elections.

Petitioners cite the formula crafted by the Court in the landmark case of *Veterans Federation Party v. COMELEC*. [31] They allege that the June 25, 2003 Resolution of the Court in *Ang Bagong Bayani-OFW v. COMELEC* [32] "reiterated that the additional seats for qualified party-list organizations shall be computed in accordance with the above formula in *Veterans*" and that the November 20, 2003 Resolution [33] of the Court in the same case "had not departed from its 25 June 2003 Resolution." [34]

A review of the pertinent legal provisions and jurisprudence on the party-list system is appropriate.

The Constitution provides:

Art. VI, Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations. (emphasis supplied)

Pursuant to the Constitution's mandate, Congress enacted R.A. No. 7941, also known as the "Party-List System Act," to "promote proportional representation in the election of representatives to the House of Representatives through a party-list system." The law provides as follows:

Section 11. Number of Party-List Representatives.— xxx

In determining the allocation of seats for the second vote, the following procedure shall be observed:

(a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections. (b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion of their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.

Section 12. Procedure in Allocating Seats for Party-List Representatives.— The COMELEC shall tally all the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained by each party, organization, or coalition as against the total nationwide votes cast for the party-list system. (emphases supplied)

These provisions on the party-list system were put to test in the May 11, 1998 elections. In the landmark case of *Veterans*, [35] several petitions for certiorari, prohibition and mandamus, with prayers for the issuance of temporary restraining orders or writs of preliminary injunction, were filed by some parties and organizations that had obtained at least two percent of the total party-list votes cast in the May 11, 1998 party-list elections, against COMELEC and 38 other parties, organizations and coalitions which had been declared by COMELEC as entitled to party-list seats in the House of Representatives. The following issues were raised: 1) whether the twenty percent constitutional allocation is mandatory; 2) whether the two percent threshold requirement and the three-seat limit under Section 11(b) of R.A. No. 7941 is constitutional; and 3) how the additional seats of a qualified party should be determined. In said case, the Court set the "four inviolable parameters" of the party-list system under the Constitution and R.A. No. 7941, to wit:

First, the twenty percent allocation — the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.

Second, the two percent threshold — only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives.

Third, the three-seat limit — each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.

Fourth, proportional representation — the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes."

Likewise, the Court spelled out the formula for allocating the seats for party-list winners, thus:

Step One. There is no dispute among the petitioners, the public and the private respondents, as well as the members of this Court, that the initial step is to rank all the participating parties, organizations and coalitions from the highest to the lowest based on the number of votes they each received. Then the ratio for each party is computed by dividing its votes by the total votes cast for all the parties participating in the system. All parties with at least two percent of the total votes are guaranteed one seat each. Only these parties shall be considered in the computation of additional seats. The party receiving the highest number of votes shall thenceforth be referred to as the "first" party.

Step Two. The next step is to determine the number of seats the first party is entitled to, in order to be able to compute that for the other parties. Since the distribution is based on proportional representation, the number of seats to be allotted to the other parties cannot possibly exceed that to which the first party is entitled by virtue of its obtaining the most number of votes.

x x x

Now, how do we determine the number of seats the first party is entitled to? x x x The formula x x x is as follows:

Number of votes
of first party

----- =

Total votes for

Party-list system

Proportion of votes of

first party relative to

total votes for party-list system

If the proportion of votes received by the first party without rounding it off is equal to at least six percent of the total valid votes cast for all the party list groups, then the first party shall be entitled to two additional seats or a total of three seats overall. If the proportion of votes without a rounding off is equal to or greater than four percent, but less than six percent, then the first party shall have one additional or a total of two seats. And if the proportion is less than four percent, then the first party shall not be entitled to any additional seat.

x x x

Step Three. The next step is to solve for the number of additional seats that the other qualified parties are entitled to, based on proportional representation. The formula is encompassed by the following complex fraction:

Additional seats for

for concerned =
 party No. of votes of
 concerned party

Total No. of votes
 party-list system

x

No. of votes of
 first party

Total No. of votes
 for party-list system

No. of additional
 seats allocated
 to the first party

In simplified form, it is written as follows:

Additional seats
 for concerned =
 party No. of votes of
 concerned party

No. of votes of
 first party

x No. of additional seats allocated to the first party [36]

(emphases supplied)

Applying this formula, the Court found the outcome of the May 11, 1998 party-list elections as follows:

Organization Votes Garnered %age of Total Votes Initial No. of Seats Additional Seats Total

1. APEC 503,487 5.50% 1 1 2

2. ABA 321,646 3.51% 1 321,646/503,487 * 1 = 0.64 1

3. ALAGAD 312,500 3.41% 1 312,500/503,487 * 1 = 0.62 1

4. VETERANS FEDERATION 304,802 3.33% 1 304,802/503,487 * 1 = 0.61 1

5. PROMDI 255,184 2.79% 1 255,184/503,487 * 1 = 0.51 1

6. AKO 239,042 2.61% 1 239,042/503,487 * 1 = 0.47 1

7. NCSFO 238,303 2.60% 1 238,303/503,487 * 1 = 0.47 1

8. ABANSE!PINAY 235,548 2.57% 1 235,548/503,487 * 1 = 0.47 1

9. AKBAYAN! 232,376 2.54% 1 232,376/503,487 * 1 = 0.46 1

10. BUTIL 215,643 2.36% 1 215,643/503,487 * 1 = 0.43 1

11. SANLAKAS 194,617 2.13% 1 194,617/503,487 * 1 = 0.39 1

12. COOP-NATCCO 189,802 2.07% 1 189,802/503,487 * 1 = 0.38 1

13. COCOFED 186,388 2.04% 1 186,388/503,487 * 1 = 0.37 1 [37]

The case of *Ang Bagong Bayani* arose during the May 14, 2001 party-list elections. Two petitions for certiorari were filed by several party-list candidates: (a) to challenge a resolution of the COMELEC approving the participation of some 154 organizations and parties in the May 14, 2001 party-list elections; and (b) to disqualify certain parties classified as "political parties" and "organizations/coalitions" by COMELEC. In a Decision dated June 26, 2001, the Court established the eight-point guideline [38] for the screening of party-list participants. The case was then remanded to the COMELEC for the immediate conduct of summary evidentiary hearings to implement the eight-point guideline.

In due time, COMELEC submitted its compliance reports to the Court. Based on the compliance reports, the Court issued several resolutions proclaiming BAYAN MUNA with its three nominees and AKBAYAN!, BUTIL, APEC and CIBAC, with one nominee each, as party-list winners. [39]

Subsequently, several motions for proclamation were filed by other party-list participants. In resolving the motions, the Court had to consider, among others, the effect of the disqualification after the elections of many party-list participants to the total votes cast for the party-list elections. In the previous case of *Labo v. COMELEC*, [40] this Court ruled that the votes cast for an ineligible or disqualified candidate cannot be considered "stray" except when the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but nonetheless cast their votes in favor of the ineligible candidate. In its Resolution dated June 25, 2003, the Court held that the *Labo* doctrine cannot be applied to the party-list system in view of Sec. 10 of R.A. No. 7941 which expressly provides that the votes cast for a party, a sectoral organization or a coalition "not entitled to be voted for shall not be counted." The Court then proceeded to determine the number of nominees the party-list winners were entitled, thus: [41]

We shall now determine the number of nominees each winning party is entitled to, in accordance with the formula in *Veterans*. For purposes of determining the number of its nominees, BAYAN MUNA (the party that obtained the highest number of votes) is considered the first party. The applicable formula is as follows:

Number of votes of first party Proportion of votes of first
 ----- = party relative to total votes
 Total votes for party-list system for party-list system

Applying this formula, we arrive at 26.19 percent:

x x x

Having obtained 26.19 percent, BAYAN MUNA is entitled to three (3) seats. This finding is pursuant to our ruling in *Veterans* x x x.

x x x

[W]e shall compute only the additional seat or seats to be allocated, if any, to the other qualified parties -- BUHAY, AMIN, ABA, COCOFED, PM, SANLAKAS and ABANSE! PINAY.

Applying the relevant formula in Veterans to BUHAY, we arrive at 0.51:

Additional Seats =

=

= Votes Cast for Qualified Party ----- x Votes Cast for First Party

290,760

----- x

1,708,253

0.51

Allotted Seats for First Party

3

Since 0.51 is less than one, BUHAY is not entitled to any additional seat. It is entitled to only one qualifying seat like all the other qualified parties that are ranked below it, as shown in Table No. 3:

Rank Party-list Votes Percentage (%) Additional Seats

2 APEC 802,060 12.29 n/c

3 AKBAYAN! 377,852 5.79 n/c

4 BUTIL 330,282 5.06 n/c

5 CIBAC 323,810 4.96 n/c

6 BUHAY 290,760 4.46 0.51

7 AMIN 252,051 3.86 0.44

8 ABA 242,199 3.71 0.42

9 COCOFED 229,165 3.51 0.40

10 PM 216,823 3.32 0.38

11 SANLAKAS 151,017 2.31 0.26

12 ABANSE!PINAY 135,211 2.07 0.24

The additional seats for APEC, AKBAYAN!, BUTIL and CIBAC, if any, were not determined in the Court's Resolution dated June 25, 2003, as there was a separate pending motion filed by BAYAN MUNA to set aside the resolution of the COMELEC proclaiming APEC, AKBAYAN!, BUTIL and CIBAC's respective additional nominees.

Dissatisfied by the Court's June 25, 2003 Resolution, BUHAY filed a motion to have it declared as entitled to one (1) additional seat. On November 20, 2003, in the same case of Ang Bagong Bayani, [42] the Court computed the additional seats for APEC, AKBAYAN!, BUTIL and CIBAC in accordance with the formula stated in the Court's Resolution dated June 25, 2003, and found the results as follows:

APEC — 1.40

AKBAYAN — 0.66

BUTIL — 0.58

CIBAC — 0.56

Then, the Court resolved pro hac vice to grant BUHAY's motion, reasoning that:

It is thus established in the Resolution of 25 June 2003 that, like APEC, BUTIL, CIBAC and AKBAYAN, BUHAY had obtained more than four percent (4%) of the total number of votes validly cast for the party-list system and obtained more than 0.50 for the additional seats. Accordingly, just like the first four whose additional nominees are now holding office as member of the House of Representatives, BUHAY should be declared entitled to additional seat. [43]

In light of all these antecedents, we deny the petition.

The formula in the landmark case of Veterans prevails.

First, the June 25, 2003 Resolution of the Court in Ang Bagong Bayani referred to the Veterans case in determining the number of seats due for the party-list winners. The footnote on said resolution in computing the additional seats for the party-list winners states: "[f]or a discussion of how to compute additional nominees for parties other than the first, see Veterans, supra, at pp. 280-282. x x x." [44] The Court likewise held that:

We also take this opportunity to emphasize that the formulas devised in Veterans for computing the number of nominees that the party-list winners are entitled to cannot be disregarded by the concerned agencies of government, especially the Commission on Elections. These formulas ensure that the number of seats allocated to the winning party-list candidates conform to the principle of proportional representation mandated by the law. [45](emphases supplied)

Second, in the November 20, 2003 Resolution in Ang Bagong Bayani, the Court gave an additional seat to BUHAY only because it was similarly situated to APEC, BUTIL, CIBAC and AKBAYAN which "had obtained more than four percent (4%) of the total number of votes validly cast for the party-list system and obtained more than 0.50 for the additional seats." Well to note, the grant of an additional seat to BUHAY was pro hac vice, thus:

ACCORDINGLY, the Court hereby RESOLVES, pro hac vice

- To consider closed and terminated the issue regarding the proclamation by the COMELEC of the additional nominees of APEC, BUTIL, CIBAC and AKBAYAN, such nominees having taken their oath and assumed office;
- To DECLARE that BUHAY is entitled to one (1) additional seat in the party-list system in the elections of May 2001 and;
- To ORDER the COMELEC to proclaim BUHAY's second nominee.

SO ORDERED. [46] (emphasis supplied)

Pro hac vice is a Latin term meaning "for this one particular occasion." [47] A ruling expressly qualified as pro hac vice cannot be relied upon as a precedent to govern other cases. It was therefore erroneous for respondent Commission to apply the November 20, 2003 Resolution and rule that the formula in Veterans has been abandoned.

The confusion in the petition at bar must have been created by the way the Veterans formula was cited in the June 25, 2003 Resolution of the Court in Ang Bagong Bayani. [48] Be that as it may, we reiterate that the prevailing formula for the computation of additional seats for party-list winners is the formula stated in the landmark case of Veterans, viz:

Additional seats
for concerned =
party No. of votes of
concerned party
----- x
No. of votes of
first party
No. of additional seats allocated to the first party [49]

Applying said formula to the undisputed figures in Party-List Canvass Report No. 20, we do not find petitioners entitled to any additional seat. Thus:

Additional seats =
for PM

=

Additional seats =
for BUTIL

= 448,072
----- x
1,203,305

0.74

429,259
----- x
1,203,305

0.71

2

2

IN VIEW WHEREOF, the petition is DENIED.

SO ORDERED.

Panganiban, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco JJ., concur.
Corona, J., sick leave.

[1] Dated May 8, 2004; Rollo, pp. 58-60.

[2] Id. at 60.

[3] Should be November 20, 2003.

[4] Rollo, pp. 58-59.

[5] Annex "K," dated June 2, 2004; Id. at 114-117.

[6] Dated June 2, 2004; Id. at 61-66.

[7] Id. at 64-66.

[8] Resolution No. NBC 04-008 dated June 29, 2004; Id. at 77.

[9] Id. at 86-90.

[10] Resolution dated June 25, 2003; 404 SCRA 719 (2003).

[11] Rollo, pp. 93-97.

[12] Id. at 95-96.

[13] In the Matter of the Comment/Recommendation of the Supervisory Committee on the Petition filed by Luzon Farmers Party (BUTIL), Citizens Battle Against Corruption (CIBAC), Partido ng Manggagawa (PM) and Gabriela Women's Party for Additional Seat and to Immediately Proclaim their Respective Second Nominees to the House of Representatives; and the Letter of Atty. Ivy Perucho of CIBAC Requesting to Calendar for Resolution said Joint Motion; Id. at 110-113.

[14] Id. at 110-113.

[15] Petition; Id. at 52-53.

[16] Id. at 25.

[17] Comment; Id. at 148-A-154.

[18] 88 SCRA 251 (1979).

[19] 176 SCRA 84 (1989).

[20] Section 5 (1), Art. VIII of the Constitution states that the Supreme Court shall "[e]xercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus."

[21] Ramos v. COMELEC, 80 Phil. 722 (1948); See also Lozada v. COMELEC, 120 SCRA 337 (1983).

[22] Meralco Securities Corporation v. Savellano, 117 SCRA 804 (1982), citing Samson v. Barrios, 63 Phil. 198 (1936); Lemi v. Valencia, 26 SCRA 203 (1969).

[23] Guieb v. Civil Service Commission, 229 SCRA 779 (1994).

[24] Ligon v. CA, 294 SCRA 73 (1998), citing Abad v. Court of First Instance of Pangasinan, Br. VIII, 206 SCRA 567, 579 (1992); Solid Homes, Inc. v. Court of Appeals, 271 SCRA 157, 164 (1997).

[25] See Ligon v. CA, *ibid.*; ABS-CBN Supervisors Employees Union Members v. ABS-CBN Broadcasting

Corporation, 304 SCRA 489 (1999); In Re: Petition Seeking for Clarification as to the Validity and Forceful Effect of Two (2) Final and Executory but Conflicting Decisions of the Honorable Supreme Court, 321 SCRA 62 (1999); Diesel Construction Company, Inc. v. Jollibee Foods Corporation, 323 SCRA 844 (2000); Sevillana v. I.T., 356 SCRA 451 (2001); and Neplum, Inc. v. Orbeso, 384 SCRA 466 (2002).

[26] ABS-CBN Supervisors Employees Union Members v. ABS-CBN Broadcasting Corporation, *supra*, citing Salazar v. NLRC, 256 SCRA 273 (1996).

[27] Neplum, Inc. v. Orbeso, *supra*.

[28] Rollo, pp. 152-153.

[28] See Salva v. Makalintal, 340 SCRA 506 (2000); Loong v. COMELEC, 305 SCRA 832 (1999), citing Filipino Engineering and Machine Shop v. Ferrer, 135 SCRA 25 (1985).

[30] See De Leon v. Carpio, 178 SCRA 457 (1989); Madrigal v. Lecaroz, 191 SCRA 20 (1990); Alindao v. Joson, 264 SCRA 211 (1996); and Alfafara v. Acebedo Optical, Co., Inc., 381 SCRA 293 (2002).

[31] 342 SCRA 244 (2000); See Rollo, pp. 27-31.

[32] *Supra* Note 10.

[33] 416 SCRA 304 (2003).

[34] Petition; Rollo, pp. 31, 35.

[35] *Supra* Note 31.

[36] *Id.* at 277-280.

[37] *Id.* at 281.

[38] See Ang Bagong Bayani-OFW Labor Party v. COMELEC, 359 SCRA 698, 727-731 (2001).

[39] *Supra* Note 10, pp. 723-724.

[40] 211 SCRA 297 (1992).

[41] *Supra* Note 10, pp. 742-745.

[42] *Supra* Note 33, p. 306.

[43] *Id.* at 307.

[44] Footnote 37; *Supra* Note 10, p. 744.

[45] *Id.* at 739.

[46] *Supra* Note 33, pp. 307-308.

[47] Black's Law Dictionary, sixth edition (1990).

[48] See *Supra* Note 10, p. 744.

[49] *Supra* Note 31, pp. 250, 280.

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