

**CITIZENS' BATTLE AGAINST CORRUPTION (CIBAC),
PETITIONER, VS. COMMISSION ON ELECTIONS (COMELEC),
REPRESENTED BY CHAIRMAN BENJAMIN ABALOS, SR.,
RESPONDENT.**

G.R. NO. 172103. April 13, 2007

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

The Case

Before us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the March 7, 2006 Commission on Elections (COMELEC) Resolution No. 06-0248,[2] which rejected the Motion for Proclamation of the Second Nominees of Citizens' Battle Against Corruption (CIBAC), et al. under the party-list system in connection with the May 2004 National and Local Elections.

The Facts

The COMELEC, sitting en banc as the National Board of Canvassers for the Party-List System, issued Resolution No. NBC 04-004[3] promulgated on June 2, 2004, which proclaimed petitioner CIBAC as one of those which qualified to occupy a seat in Congress having received the required two percent (2%) of the total votes cast for the party-list representatives. Based on Party-List Canvass Report No. 19,[4] CIBAC received a total number of 493,546 votes out of the 12,627,852 votes cast for all the party-list participants, which, by applying the formula adopted by the Supreme Court in Veterans Federation Party v. COMELEC,[5] resulted in a percentage of 3.9084.[6] In the computation for additional seats for the parties, the COMELEC adopted a simplified formula of one additional seat per additional 2%, thereby foreclosing the chances of CIBAC to gain an additional seat under the party-list system for having received less than what was prescribed by the poll body.[7]

On June 22, 2004, petitioner CIBAC, together with Luzon Farmers Party (BUTIL) and Partido ng Manggagawa (PM), filed a Joint Motion for Immediate Proclamation[8] entreating the COMELEC en banc to recognize their entitlement to an additional seat and that their second nominees be immediately proclaimed. They based their claim on Ang Bagong Bayani-OFW Labor Party v. COMELEC (Ang Bagong Bayani and Bayan Muna), applying the following Veterans formula:

Additional Seats =

Votes Cast for Qualified Party

x Allotted Seats

Votes Cast for First Party for First Party[9]

On March 7, 2006, the COMELEC en banc issued the challenged Resolution No. 06-0248 contained in the Excerpt from the Minutes of the Regular En Banc Meeting of the COMELEC,[10] which adopted the March 6, 2006 Memorandum of the Supervisory Committee relative to the Urgent Motion to Resolve the Motion for Proclamation of the Second Nominees of CIBAC, BUTIL, and PM party-lists, in connection with the May 2004 elections for party-list representatives. The pertinent portion reads:

"On 01 May 2004, Commissioner Mehol K. Sadain, then CIC on Party-List Concerns, acting on queries from several party-list candidates regarding the formula to be used by the Commission in determining the additional seats for party list winners in the 10 May 2004 elections, issued a memorandum on the matter to the Commission en-banc. As a result, on the [sic] 08 May 2004, the Commission en banc promulgated Resolution No. 6835 (Annex "A") the resolutory portion of which reads" "RESOLVES, to adopt the simplified formula of one additional seat per additional two percent (underscoring supplied) of the total party-list votes in the proclamation of the party-list winners in the coming 10 May 2004 National and Local Elections."

The Party List Canvass Report No. 22 of the National Board of Canvassers, (Annex "B") shows that CIBAC, BUTIL and PM have the following percentage of total votes garnered:

CIBAC

-

3.8638

BUTIL

-

3.3479

PM

-

3.4947

Following the simplified formula of the Commission, after the first 2% is deducted from the percentage of votes of the above-named party-lists, they are no longer entitled to an additional seat. It is worth mentioning that the Commission, consistent with its formula, denied the petition for a seat of ABA-AKO and ANAD after garnering a percentage of votes of 1.9900 and 1.9099 respectively. For consideration."

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to adopt the recommendation of the Supervisory Committee to deny the foregoing Motion of CIBAC, BUTIL and PM party-lists for proclamation of second nominees, following the simplified formula of the Commission on the matter per Comelec Resolution No. 6835 promulgated 08 May 2004.

The Issues

Undeterred, CIBAC filed the instant Petition for Certiorari[11] before this Court, raising two issues, viz:

A.

WHETHER OR NOT THE COMMISSION ON ELECTIONS, IN ADOPTING 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 MAY 10, 2004 NATIONAL AND LOCAL ELECTION, THUS, ADJUDGING THE PETITIONER HEREIN AS ENTITLED ONLY TO ONE (1) SEAT, ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING

TO LACK OR EXCESS OF JURISDICTION.

B.

WHETHER OR NOT PETITIONER CIBAC, AND OTHER PARTY-LIST GROUPS SIMILARLY SITUATED, ARE ENTITLED TO ONE (1) ADDITIONAL SEAT BASED ON THE FORMULA CRAFTED BY THE SUPREME COURT IN THE CASES OF ANG BAGONG BAYANI AND BAYAN MUNA.[12]

In gist, the core issue is whether or not the COMELEC gravely abused its discretion when it denied petitioner CIBAC an additional seat in the House of Representatives under the party-list system by using the simplified formula instead of the claimed Ang Bagong Bayani and Bayan Muna formula.

Petitioner CIBAC asseverates that the COMELEC committed a serious departure from settled jurisprudence amounting to grave abuse of discretion when it mistakenly relied on the "simplified formula" as the basis for its resolution. Moreover, it stressed that the COMELEC simplified formula runs counter to the Ang Bagong Bayani and Bayan Muna formula which used the "number of allotted seats for the first party" as multiplier. If the Ang Bagong Bayani and Bayan Muna formula were applied, CIBAC would be entitled to one additional seat, thus:

Additional seats = $495,193 \times 3 = 1.2345$

1,203,305

Lastly, petitioner faults the COMELEC for its failure to act on and so dismiss the petitions for disqualification filed by the other party-list groups which could have enabled the COMELEC to "make an accurate determination of the votes that each party-list group has actually obtained." It therefore asks the Court to set aside the assailed COMELEC Resolution No. 06-0248; and direct the COMELEC to declare CIBAC as entitled to one (1) additional seat and to immediately proclaim Ma. Blanca Kim Bernardo-Lokin, its second nominee, as member of the House of Representatives.

The Court's Ruling

Entitlement to an additional seat

In deciding the controversy at hand, a second look at the enabling law, Republic Act No. (R.A.) 7941, "An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor," is in order. The objective of the law was made clear in Section 2, thus:

Declaration of Policy.—The State shall promote proportional representation in the election of representatives to the House of Representatives through a party-list system of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to the marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation that will benefit the nation as a whole, to become members of the House of Representatives. Towards this end, the State shall develop and guarantee a full, free and open party system in order to attain the broadest possible representation of party, sectoral or group interests in the House of Representatives by enhancing their chances to compete for and win seats in the legislature, and shall provide the simplest scheme possible. (Emphasis supplied.)

In determining the number of seats a party-list is entitled to, Sec. 11 prescribes 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: provided, finally, that each party, organization, or coalition shall be entitled to not more than three (3) seats (emphasis supplied).

The Court, in the leading case of *Veterans*, listed the four (4) inviolable parameters to determine the winners in a Philippine-style party-list election mandated by the Constitution and R.A. 7941, as follows:

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." [13] (Emphasis supplied.)

In determining the number of additional seats for each party-list that has met the 2% threshold, "proportional representation" is the touchstone to ascertain entitlement to extra seats.

The correct formula in ascertaining the entitlement to additional seats of the first party and other qualified party-list groups was clearly explicated in *Veterans*:

[H]ow do we determine the number of seats the first party is entitled to? The only basis given by the law is that a party receiving at least two percent of the total votes shall be entitled to one seat. Proportionally, if the first party were to receive twice the number of votes of the second party, it should be entitled to twice the latter's number of seats and so on. The formula, therefore, for computing the number of seats to which the first party is entitled is as follows:

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

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.

We adopted the six percent bench mark, because the first party is not always entitled to the maximum number of additional seats. Likewise, it would prevent the allotment of more than the total number of available seats, such as in an extreme case wherein 18 or more parties tie for the highest rank and are thus entitled to three seats each. In such scenario, the number of seats to which all the parties are entitled may exceed the maximum number of party-list seats reserved in the House of Representatives.

x x x x

Formula for Additional Seats of Other Qualified Parties

The next step is to solve for the number of additional seats that the other qualified parties are entitled to, based on proportional representation. x x x

x x x x

In simplified form, it is written as follows:

Additional seats for concerned party

= No. of votes of concerned party x No. of additional seats allocated to the first party (Emphasis supplied.)

No. of votes of first party

x x x x

The above formula does not give an exact mathematical representation of the number of additional seats to be awarded since, in order to be entitled to one additional seat, an exact whole number is necessary. In fact, most of the actual mathematical proportions are not whole numbers and are not rounded off for the reasons explained earlier. To repeat, rounding off may result in the awarding of a number of seats in excess of that provided by the law. Furthermore, obtaining absolute proportional representation is restricted by the three-seat-per-party limit to a maximum of two additional slots. An increase in the maximum number of additional representatives a party may be entitled to would result in a more accurate proportional representation. But the law itself has set the limit: only two additional seats. Hence, we need to work within such extant parameter.[14] (Emphasis supplied.)

On June 25, 2003, the formula was put to test in Ang Bagong Bayani and Bayan Muna. In determining the additional seats for the other qualified parties—BUHAY, AMIN, ABA, COCOFED, PM, SANLAKAS, and ABANSE! PINAY—the following computation was made:

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

Additional Seats = Votes Cast for Qualified Party x Alloted Seats for First Party

Votes Cast for First Party

= 290,760 x 3

1,708,253

= 0.51

Since 0.51 is less than one, BUHAY is not entitled to any additional seat.[15]

From a scrutiny of the Veterans and Ang Bagong Bayani and Bayan Muna formulae in determining the additional seats for party-list representatives, it is readily apparent that the Veterans formula is materially different from the one used in Ang Bagong Bayani and Bayan Muna. In Veterans, the multiplier used was "the [number] of additional seats allocated to the first party,:" while in the Ang Bagong Bayani and Bayan Muna formula, the multiplier "allotted seats for first party" was applied. The dissimilarity in the multiplier used spells out a big difference in the outcome of the equation. This divergence on the multiplier was pointed out and stressed by respondent COMELEC. Nevertheless, petitioner insists that the correct multiplier is the ALLOTED seats for the first party referring to the three (3) seats won by Bayan Muna which emerged as the winning first party, as allegedly prescribed in Ang Bagong Bayani and Bayan Muna. On this issue, petitioner ratiocinates this way:

It cannot be emphasized enough that the formula in the Ang Bagong Bayani and Bayan Muna cases rendered in 2003, effectively modified the earlier Veterans formula, with the clear and explicit use of the "allotted seats for the first party". Considering that the first party, Bayan Muna, was allotted to the maximum three (3) seats under the law, it is therefore clear that the multiplier to be used is three (3), the allotted seats for the first party.[16]

However, this postulation is bereft of merit and basis.

A careful perusal of the four corners of Ang Bagong Bayani and Bayan Muna betrays petitioner's claim as it did not mention any revision or reshaping of the Veterans formula. As a matter of fact, the Court had in mind the application of the original Veterans formula in Ang Bagong Bayani and Bayan Muna. This conclusion is based on the aforequoted formula in Ang Bagong Bayani and Bayan Muna, as follows:

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

Additional Seats

= Votes Cast for Qualified Party x Allotted Seats for First Party

Votes Cast for First Party

= 290,760 x 3

1,708,253

= 0.51

The phrase "applying the relevant formula in Veterans to BUHAY" admits of no other conclusion than that the Court merely applied the Veterans formula to Ang Bagong Bayani and Bayan Muna in resolving the additional seats by the other qualified party-list groups. However, it appears that there was an inaccurate presentation of the Veterans formula as the Court used the multiplier "allotted seats for the first party" in Ang Bagong Bayani and Bayan Muna instead of the "[number] of additional seats allocated to the first party" prescribed in the Veterans formula. It is apparent that the phrase "[number] of additional" was omitted, possibly by inadvertence from the phrase "allotted seats for First Party." The disparity is material, substantial, and significant since the multiplier "[number] of additional seats allocated to the First Party" prescribed in the Veterans formula pertains to a multiplier of two (2) seats, while the multiplier "allotted seats for the first party" in Ang Bagong Bayani and Bayan Muna formula can mean a multiplier of maximum three (3) seats, since the first party can garner a maximum of three (3) seats.

Moreover, footnote 37 of Ang Bagong Bayani and Bayan Muna states that "for a discussion of how to compute additional nominees for parties other than the first, see Veterans x x x." It clarifies the confusion created by the imprecise formula expressed in Ang Bagong Bayani and Bayan Muna. Thus, the Court rules that the claimed Ang Bagong Bayani and Bayan Muna formula has not modified the Veterans formula. As a matter of fact, there was really no other formula approved by the Court other than the Veterans formula in fixing the number of additional seats for the other qualified party-list groups. Also, in Partido ng Manggagawa v. COMELEC, the Court found that the confusion in the computation of additional seats for the other qualified party-list groups arose "[from] the way the Veterans formula was cited in the June 25, 2003 Resolution of the Court in Ang Bagong Bayani." We reiterated that "the prevailing formula for the computation of additional seats for party-list winners is the formula stated in the landmark case of Veterans x x x." [17]

Applying the Veterans formula in petitioner's case, we reach the conclusion that CIBAC is not entitled to an additional seat. Party-List Canvass Report No. 20[18] contained in the petition shows that the first party, Bayan Muna, garnered the highest number of votes, that is, a total of 1,203,305 votes. Petitioner CIBAC, on the other hand, received a total of 495,190 votes. It was proclaimed that the first party, Bayan Muna, was entitled to a maximum of three (3) seats [19] based on June 2, 2004 Resolution No. NBC 04-004 of the COMELEC. A computation using the Veterans formula would therefore lead us to the following result:

No. of votes of concerned party

x

No. of additional seats allocated to the first party (Emphasis supplied.)

=

Additional Seats for concerned party

No. of votes of first party

Applying this formula, the result is as follows:

495,190

1,203,305

x

2

0.41152493

x

2

=

0.82304986

This is a far cry from the claimed Ang Bagong Bayani and Bayan Muna formula which used the multiplier "allotted seats for the first party," viz:

Additional Seats = Votes Cast for Qualified Party

x

Allotted Seats for First Party

Votes Cast for First Party

Applying the Ang Bagong Bayani and Bayan Muna formula to CIBAC, it yields the following result:

Additional seats = 495,190

x

3

= 1.2345

1,203,305

Unfortunately, it is the Veterans formula that is sanctioned by the Court and not the Ang Bagong Bayani and Bayan Muna formula that petitioner alleges.

Since petitioner CIBAC got a result of 0.82304986 only, which is less than one (1), then it did not obtain or reach a whole number. Petitioner has not convinced us to deviate from our ruling in Veterans that "in order to be entitled to one additional seat, an exact whole number is necessary." Clearly, petitioner is not entitled to an additional seat.

COMELEC's application of Ang Bagong Bayani and Bayan Muna is incorrect

The Court laments the fact that the COMELEC insisted in using a simplified formula when it is fully aware of the ruling in the Veterans case. The COMELEC explained that it "merely based its judgment on Comelec Resolution No. 6835 which cited Supreme Court Resolution[20] dated 20 November 2003 granting BUHAY's Motion for Reconsideration and entitling it to one additional seat for having garnered more than four percent (4%) of the total

number of votes validly cast for the party-list system, thus recognizing once again the simplified formula." However, in said Resolution, the Court, in granting BUHAY an additional seat, meant to apply it on that specific case alone, not being a precedent—pro hac vice (for this one particular occasion); thus, this Resolution cannot be applied as a precedent to future cases. The simplified formula having already been abandoned, the COMELEC should have used and adhered to the Veterans formula.

The Court has consistently reminded the COMELEC of its "function to enforce and administer all laws and regulations relative to the conduct of an election." As judicial decisions form part of the law of the land, the COMELEC cannot just ignore or be oblivious to the rulings issued by the Court. Basic is the rule that lower courts and quasi-judicial tribunals must bow to the decisions and resolutions of the highest court of the land. The COMELEC is not an exception. It cannot do otherwise.

WHEREFORE, the petition is DENIED for lack of merit. The assailed March 7, 2006 Comelec Resolution No. 06-0248 is hereby AFFIRMED only insofar as it denied petitioner CIBAC's motion for the proclamation of its second nominee to an additional seat under the 2004 party-list elections. The portion of Comelec Resolution No. 06-0248, which adopted and applied the "simplified formula of the Commission on the matter per Comelec Resolution No. 6835 promulgated 08 May 2004," is ANNULLED and SET ASIDE. Respondent Comelec is ORDERED to strictly apply the Veterans formula in determining the entitlement of qualified party-list groups to additional seats in the party-list system. No costs.

SO ORDERED.

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

Nachura, J., no part. Signed pleading as Sol Gen.

[1] Rollo, pp. 3-27.

[2] Id. at 28-29; contained in the "Excerpt from the Minutes of the Regular En Banc Meeting of the Commission on Elections."

[3] Id. at 30-35.

[4] Id. at 40-43.

[5] G.R. Nos. 136781, 136786, & 136795, October 6, 2000, 342 SCRA 244.

[6] Rollo, pp. 31-32.

[7] Supra note 2.

[8] Rollo, pp. 44-50.

[9] G.R. Nos. 147589 & 147613, June 25, 2003, 404 SCRA 719, 744 (Resolution).

[10] Supra note 2.

[11] BUTIL and PM filed a separate special civil action for certiorari before the Court in G.R. No. 164702, likewise questioning COMELEC Resolution No. 06-0248.

[12] Supra note 1, at 14-15.

[13] Supra note 5, at 255.

[14] Id. at 278-282.

[15] Supra note 9.

[16] Supra note 1, at 18; original in boldface.

[17] G.R. No. 164702, March 15, 2006, 484 SCRA 671, 697.

[18] Supra note 1, at 11-12.

[19] Rollo, p. 33.

[20] Ang Bagong Bayani, OFW v. COMELEC, G.R. Nos. 147589 & 147613, November 20, 2003, 416 SCRA 304.

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