

EN BANC

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

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

DECISION

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 Votes Cast for Qualified x Allotted Seats

Seats = Party
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 resolatory 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:

$$\begin{array}{lcl} \text{Additional} & & \\ \text{seats} = & \frac{495,193}{1,203,305} \times 3 = & 1.2345 \end{array}$$

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:

$$\frac{\text{Number of votes of first party.}}{\text{Total votes for party-list system}} = \frac{\text{Proportion of votes of first party relative to total votes for party-list system}}{\text{Proportion of votes of first party relative to total votes for party-list system}}$$

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.

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

In simplified form, it is written as follows:

$$\frac{\text{Additional seats for concerned party}}{\text{No. of votes of first party}} = \frac{\text{No. of votes of concerned party}}{\text{No. of votes of first party}} \times \text{No. of additional seats allocated to the first party (Emphasis supplied.)}$$

x x x x

The above formula does not give an exact mathematical representation