

## EN BANC

[ G.R. No. 246816, September 15, 2020 ]

**ANGKLA: ANG PARTIDO NG MGA PILIPINONG MARINO, INC. (ANGKLA), AND SERBISYO SA BAYAN PARTY (SBP), PETITIONERS, VS. COMMISSION ON ELECTIONS (SITTING AS THE NATIONAL BOARD OF CANVASSERS), CHAIRMAN SHERIFF M. ABAS, COMMISSIONER AL A. PARRENO. COMMISSIONER LUIE TITO F. GUIA, COMMISSIONER MA. ROWENA AMELIA V. GUANZON, COMMISSIONER SOCCORRO B. INTING, COMMISSIONER MARLON S. CASQUEJO, AND COMMISSIONER ANTONIO T. KHO, JR., RESPONDENTS. AKSYON MAGSASAKA - TINIG PARTIDO NG MASA (AKMA-PTM), PETITIONER-IN-INTERVENTION.**

### DECISION

**LAZARO-JAVIER, J.:**

#### THE CASES

These twin Petitions a) for *Certiorari* and Prohibition, and b) in-Intervention assail the constitutionality of Section 11 (b), Republic Act No. (RA) 7941<sup>[1]</sup> insofar as it provides that those garnering more than two percent (2%) of the votes cast for the party list system shall be entitled to additional seats **in proportion to their total number of votes**, thus:

**Section 11.** *Number of Party-List Representatives, xxx*

x x x x    x x x    x x x

(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 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 added)

Under the provision, party-lists garnering at least 2% of the votes cast for the party-list system (two-percenters) are guaranteed one seat each in the House of Representatives. Meanwhile, the challenged proviso allocates additional congressional seats to party-lists "in proportion to their total number of votes."

Petitioners ANGKLA: Ang Partido Ng Mga Pilipinong Marino, Inc., (ANGKLA) and Serbisyo sa Bayan Party (SBP) and Petitioner-in-Intervention Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTN) essentially assert that the allocation of additional seats in proportion to a party-list's "total number of votes" results in the double-counting of votes in favor of the two-percenters. For the same votes which guarantee the two-percenters a seat in the first round of seat allocation are again considered in the second round. The proviso purportedly violates the equal protection clause, hence, is unconstitutional.<sup>[2]</sup>

The aforementioned petitioners, therefore, pray that respondent Commission on Elections (COMELEC) be enjoined from double-counting the votes in favor of the two-percenters. Instead, the 2% votes counted in the first round should first be excluded before proceeding to the second round of seat allocation. Their proposed framework is, as follows:

1. The parties, organizations, and coalitions taking part in the party-list elections shall be ranked from the highest to the lowest based on the total number of votes they each garnered in the party-list elections.
2. Each of the parties, organizations, and coalitions taking part in the party-list elections receiving at least two percent (2%) of the total votes cast under the party-list elections shall be entitled to one guaranteed seat each.
3. Votes amounting to two percent (2%) of the total votes cast for the party-list elections obtained by each of the participating parties, organizations, and coalitions should then be deducted from the total votes of each of these party-list groups that have been entitled to and given guaranteed seats.
4. The parties, organizations, and coalitions shall thereafter be re-ranked from highest to lowest based on the recomputed number of votes, that is, after deducting the two percent (2%) stated in

paragraph 3.

5. The remaining party-list seats (or the "additional seats") shall then be distributed in proportion to the recomputed number of votes in paragraph 3 until all the additional seats are allocated.

6. Each party, organization, or coalition shall be entitled to not more than three (3) seats.<sup>[3]</sup>

This position is allegedly consistent with the Court's Resolution in **Barangay Association For National Advancement And Transparency (BANAT) v. COMELEC** (BANAT)<sup>[4]</sup> dated July 8, 2009:

xxx CIBAC's 2.81% (from the percentage of 4.81% less the 2% for its guaranteed seat) has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03 xxx (Emphasis added)

On May 22, 2019, the National Board of Canvassers (NBOC) promulgated NBOC Resolution No. 004-19<sup>[5]</sup> declaring the winning party-list groups in the May 13, 2019 elections. Based on the National Canvass Report No. 8<sup>[6]</sup> and adhering to the Court's pronouncement in BANAT, respondent COMELEC distributed sixty-one (61) congressional seats among the following parties, organizations, and coalitions taking part in the May 13, 2019 party-list election, viz.:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	%OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651,987	9.51	3
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01	3
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76	2
4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33	2
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76	2
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1PACMAN	713,969	2.56	2
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44	2
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26	2
9	COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILIPPINES, INC.	SENIOR CITIZENS	516,927	1.85	1
10	MAGKAKASAMA SA SAKAHAN, KAUNLARAN	MAGSASAKA	496,337	1.78	1
11	ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES	APEC	480,874	1.72	1
12	GABRIELA WOMEN'S PARTY	GABRIELA	449,440	1.61	1
13	AN WARAY	AN WARAY	442,090	1.59	1
14	COOPERATIVE NATCCO NETWORK	COOP-NATTCO	417,285	1.50	1
15	ACT TEACHERS	ACT TEACHERS	395,327	1.42	1
16	PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.	PHILRECA	394,966	1.42	1
17	AKO BISAYA, INC.	AKO BISAYA	394,304	1.41	1
18	TINGOG SINIRANGAN	TINGOG SINIRANGAN	391,211	1.40	1
19	ABONO	ABONO	378,204	1.36	1
20	BUHAY HAYAAN	BUHAY	361,493	1.30	1

	YUMABONG				
21	DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH	DUTERTE YOUTH	354,629	1.27	1
22	KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING	KALINGA	339,655	1.22	1
23	PWERSA NG BAYANING ATLETA	PBA	326,258	1.17	1
24	ALLIANCE OF ORGANIZATIONS, NETWORKS, AND ASSOCIATIONS OF THE PHILIPPINES	ALONA	320,000	1.15	1
25	RURAL ELECTRIC CONSUMERS AND BENEFICIARIES OF DEVELOPMENT AND ADVANCEMENT, INC.	RECOBODA	318,511	1.14	1
26	BAGONG HENERASYON	BH (BAGONG HENERASYON)	288,752	1.04	1
27	BAHAY PARA SA PAMILYANG PILIPINO, INC.	BAHAY	281,793	1.01	1
28	CONSTRUCTION WORKERS SOLIDARITY	CWS	277,890	1.00	1
29	ABANG LINGKOD, INC.	ABANG LINGKOD	275,199	0.99	1
30	ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION HARMONY TOWARDS EDUCATIONAL REFORM	A TEACHER	274,460	0.98	1
31	BARANGAY HEALTH WELLNESS	BHW	269,518	0.97	1
32	SOCIAL AMELIORATION AND GENUINE INTERVENTION ON POVERTY	SAG IP	257,313	0.92	1
33	TRADE UNION CONGRESS PARTY	TUCP	256,059	0.92	1 .
34	MAGDALO PARA SA PILIPINO	MAGDALO	253,536	0.91	1
35	GALING SA PUSO PARTY	GP	249,484	0.89	1
36	MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC.	MANILA TEACHERS 1	249,416	0.89	1
			<i>t</i>		
37	REBOLUSYONARONG ALYANSA MAKABANSA	RAM	238,150	0.85	1
38	ALAGAAN NATIN ATING KALUSUGAN	ANAKALUSUGAN	237,629	0.85	1
39	AKO PADAYON PILIPINO	AKO PADAYON	235,112	0.84	1
40	ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA0OWA MANGUNGUMA, INC.	AAMBIS-OWA	234,552	0.84	1
41	KUSUG TAUSUG	KUSUG TAUSUG	228,224	0.82	1
42	DUMPER PHILIPPINES TAXI DRIVERS ASSOCIATION, INC.	DUMPER PTDA	223,199	0.80	1
43	TALINO AT GALING PILIPINO	TGP	217,525	0.78	1
44	PUBLIC SAFETY ALLIANCE FOR TRANSFORMATION AND RULE OF LAW	PATROL	216,653	0.78	1
45	ANAK MINDANAO	AMIN	212,323	0.76	1
46	AGRICULTURAL SECTOR ALLIANCE OF THE PHILIPPINES	AGAP	208,752	0.75	1
47	LPG MARKETERS ASSOCIATION, INC.	LPGMA	208,219	0.75	1
48	OFW FAMILY CLUB, INC.	OFW FAMILY	200,881	0.72	1
49	KABAUKAT NG MAMAMAYAN	KABAYAN	198,571	0.71	1

50	DEMOCRATIC INDEPENDENT WORKERS ASSOCIATION	DIWA	196,385	0.70	1
51	KABATAAN PARTY LIST	KABATAAN	195,837	0.70	1

Additionally, the National Canvass Report No. 8 revealed that the four (4) parties, organizations, and coalitions taking part in the May 13, 2019 party-list election with the next highest votes were:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES
52	AKSYON MAGSASAKA - PARTIDOTINIGNMASA	AKMA-PTM	191,804	0.69
53	SERBISYO SA BAYAN PARTY	SBP	180,535	0.65
54	ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC,	ANGKLA	179,909	0.65
55	AKBAYAN CITIZENS ACTION PARTY	AKBAYAN	173,356	0.62

In view of this development, the aforementioned petitioners amended their petition to additionally seek the annulment of NBOC Resolution No. 004-19 on ground that it supposedly violated the Court's Resolution dated July 8, 2009 in *BANAT*. They also pray that the COMELEC be directed to proclaim that they are entitled to at least a seat each in the May 13, 2019 party-list election. This claim is based on their proposed framework for seat distribution, whereby AKMA-PTM, SBP, ANGKLA and AKB AY AN would allegedly be entitled to one (1) seat each to be taken from, or at the expense of, the seats' allocated to BAYAN MUNA, 1PACMAN, MARINO, and PROBINSYANO AKO.<sup>[7]</sup>

On June 13, 2019, AKMA-PTM filed the petition-in-intervention<sup>[8]</sup> echoing the arguments raised in the main petition pertaining to the alleged unconstitutionality of the double-counting of votes. It points out that the total votes cast under the party-list system during the May 13, 2019 elections numbered 27,884,790. Thus, a party, organization or coalition taking part in the party-list election must have obtained 2% thereof, or at least 557,695.80 votes, to secure a guaranteed seat. It argues that each time a party, organization, or coalition taking part in the party-list election earns a guaranteed seat, 557,695.80 of its votes should then be deducted from the total number of votes obtained by that party-list, thus:<sup>[9]</sup>

Party-List	VOTES GARNERED	% OF TOTAL VOTES	Guaranteed Seat	Remaining Votes
1PACMAN	713,969	2.56	1	156,273.20
MARINO	681,448	2.44	1	123,752.20
PROBINSYANO AKO	630,435	2.26	1	72,739.20

Since the remaining votes of 1 PACMAN, MARINO and PROBINSYANO AKO, on the one hand, are fewer than those garnered by petitioners AKMA-PTM (191,804), SBP (180,535) and ANGKLA (179,909), on the other, the latter should be prioritized in the second round of seat distribution. Accordingly, 1 PACMAN, MARINO and PROBINSYANO AKO should not have been allocated a second seat on top of the first guaranteed; their supposed second seats should have been awarded to petitioners. Applying the same formula, the third seat allocated to BAYAN MUNA must also be forfeited, allowing AKBAYAN representation in the House of Representatives.

The Office of the Solicitor General (OSG), through Solicitor General Jose C. Calida, Assistant Solicitor General Thomas M. Laragan and State Solicitor Isar O. Pepito, defends the position of public respondent COMELEC. It ripostes, in the main:

**First.** There is no double-counting of votes since the system of counting, pertains to two (2) different rounds and for two (2) different purposes: the first round is for purposes of applying the 2% threshold and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the second round is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected via a party-list system.<sup>[10]</sup>

**Second.** The challenged provision does not violate the equal protection clause. The two-percenters have a clearer mandate of the people than the non-two-percenters. This substantial distinction between the two (2) justifies the grant of additional rights and benefits to the former over the latter.<sup>[11]</sup>

**Third.** Petitioners mislead the Court in claiming that its Resolution in *BANAT* dated July 8, 2009 supports their proposed framework, when the latter's proposal in fact is contrary thereto.<sup>[12]</sup>

**Finally.** RA 7941 does not defeat the rationale behind the party-list system. It is erroneous for petitioners to hint that the system is reserved for the marginalized and underrepresented. On the contrary, skewed in favor of minimally-representative and unpopular party, organization or coalition taking part in the party-list election, petitioners' proposed formula is repugnant to the aim of the party-list system to ensure the broadest

representation possible.<sup>[13]</sup>

### Issue

Is Section 11(b), RA 7941 allocating additional seats to party-lists in proportion to their **total** number of votes unconstitutional?

### Ruling

The petitions are devoid of merit.

#### **Petitioners fail to meet the third requisite for judicial review**

The power of judicial review is conferred on the judicial branch of government under Section 1, Article VIII of the *Constitution*<sup>[14]</sup> It sets to correct and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch of Government<sup>[15]</sup> and may therefore be invoked to nullify actions of the legislative branch which have allegedly infringed the *Constitution*<sup>[16]</sup>

Although directly conferred by the *Constitution*, the power of judicial review is not without limitations. It requires compliance with the following requisites: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have legal standing to challenge; he or she or it must have a personal and substantial interest in the case such that he or she or it has sustained, or will sustain, direct injury as a result of the assailed measure's enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.<sup>[17]</sup>

There is no dispute that the first and the second requisites are present in this case:

**First. An actual case or controversy** means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.<sup>[18]</sup> A question is ripe for adjudication when there is an actual act that had been performed or accomplished that directly and adversely affected the party challenging the act.<sup>[19]</sup>

Here, the COMELEC already applied the assailed Section 11(b), RA 7941 when it promulgated Resolution No. 004-19, proclaimed the winning party-list parties, organizations, or coalitions in the May 13, 2019 party-list election and allocated to each of them seats in the House of Representatives.

**Second. Locus standi or legal standing** is the personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.<sup>[20]</sup> Petitioners assert that the nullification of the contested proviso would entitle them to one (1) seat each in Congress under the party-list system.

**But the third requisite** - - the question of constitutionality must be raised at the earliest possible opportunity - - is absent here.

RA 7941 was enacted in 1995. In 2009, the Court settled the interpretation of Section 11(b) in *BANAT*. The Court takes judicial notice of the fact that, thereafter, petitioner ANGKLA was proclaimed as a winning party-list organization in the 2013 and 2016 party-list elections. On the other hand, SBP garnered enough votes to secure a congressional seat in 2016.

Petitioners ANGKLA and SBP had therefore benefited from the *BANAT* doctrine in the previous elections. In fact, SBP itself, being among the winning party-list groups in the 2016 elections impleaded as respondent in **An Waray v. COMELEC**,<sup>[21]</sup> even defended the application of the *BANAT* formula., viz.:

#### **There was no grave abuse of discretion**

13. It is indisputable that the COMELEC was merely performing its duties when it adhered to the formula set forth by the Honorable Court. It is fundamental that judicial decisions applying or interpreting the law become part of the legal system of the Philippines. It becomes law of the land. The COMELEC was therefore not only right, it was duty bound to implement the formula from the *Banat Decision*.

14. Contrary to the assertions of the Petitioners, the COMELEC would have instead committed grave abuse of discretion *if it had* implemented the formula which the Petitioners advanced, for to do so would be in direct contravention of the edict of this Honorable Court, as set forth in the *Banat Decision*, xxx

x x x x

15. xxx It bears emphasis that the Petitioners have not claimed, for indeed they cannot, that the