

## EN BANC

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

**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., RESPONDENT.**

### D E C I S I O N

**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, <sup>[1]</sup> 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.** <sup>[2]</sup> (*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:

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

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

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

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, <sup>[3]</sup> 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. <sup>[4]</sup> (*emphasis supplied*)**

Party-List Canvass Report No. 20 <sup>[5]</sup> 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:

$$\begin{array}{rcl} & \text{Votes Cast for} & \\ & \text{Qualified Party} & \\ \text{Additional Seats} & = \text{-----} & \text{Allotted} \\ & - \times & \text{Seatsfor} \\ & \text{Votes Cast for First} & \text{First Party} \\ & \text{Party} & \end{array}$$

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:

$$\begin{array}{rcl} \text{Number of votes} & & \text{Proportion of votes} \\ \text{of first party} & & \text{of first party relative} \\ \text{-----} & = & \text{to total votes for} \\ \text{Total votes for} & & \text{party-list system} \\ \text{party-list system} & & \\ \text{Applying this formula, we arrive at 9.4585\%} & & \\ \\ 1,203,305 & & \\ \text{-----} & = & 9.4585\% \\ 12,721,952 & & \end{array}$$

6. Having obtained 9.4585%, the first party, Bayan Muna, is allotted