

EN BANC

**[G.R. No. 147589 AND G.R. No. 147613,
November 20, 2003]**

**ANG BAGONG BAYANI, OFW, ET AL. PETITIONERS VS.
COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.**

**BAYAN MUNA, PETITIONER VS. COMMISSION ON
ELECTIONS, RESPONDENT.**

R E S O L U T I O N

DAVIDE JR., C.J.:

The remaining issues left for the resolution of the Court are: (1) the effect of the proclamation by the Commission on Elections of the additional nominees of APEC, BUTIL, CIBAC and AKBAYAN pursuant to its Order of 22 November 2002, a proclamation this Court declared in its Resolution of 18 February 2003 to be a violation of, *inter alia*, the Temporary Restraining Order it issued on 9 May 2001; and (2) whether BUHAY is entitled to one additional seat in the party-list system.

It may be recalled that in its Resolution No. NBC-02-001 dated 6 November 2002, the COMELEC found that APEC is entitled to three seats; AKBAYAN, two seats; BUTIL, two seats; CIBAC, two seats; BUHAY, two seats; AMIN, one seat; ABA, one seat; COCOFED, one seat; NCIA, one seat; PM, one seat; and SANLAKAS, one seat.

The additional nominees of APEC, BUTIL, CIBAC and AKBAYAN proclaimed by the COMELEC immediately took their oath and assumed office as members of the House of Representatives.

In its Resolution of 25 June 2003, the Court has found that, indeed BUHAY obtained 4.46% of the total number of votes cast for the party-list system, thus:

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

In the column additional seats, those for APEC, AKBAYAN, BUTIL, and CIBAC are indicated as n/c, which, as disclosed in the footnote, means as follows:

"not computed," since, to repeat, the Court is yet to resolve the validity of the proclamation of the additional nominees of APEC, AKBAYAN, BUTIL, and CIBAC, due to the Motion of BAYAN MUNA to set aside Comelec Resolution No. NBC-02-001 promulgated on November 6, 2003 and the related November 22, 2002 Comelec Order and the November 26, 2002 Comelec Resolution.

The fact of the matter, however, is that the percentage for the additional seats for APEC, AKBAYAN, BUTIL and CIBAC is recorded in the table, just as what was done to BUHAY, thus:

APEC -- 1.40
 AKBAYAN -- 0.66
 BUTIL -- 0.58
 CIBAC -- 0.56

In the Resolution of 8 July 2003, this Court resolved that "the COMELEC may now proclaim those declared elected with one nominee each in the Resolution of 25 June 2003, to wit: BUHAY, AMIN, ABA, COCOFED, PM, SANLAKAS, and ABANSE! PINAY."

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.

ACCORDINGLY, the Court hereby RESOLVES, *pro hac vice*

1. 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;
2. To DECLARE that BUHAY is entitled to one (1) additional seat in the party-list system in the elections of May 2001 and;
3. To ORDER the COMELEC to proclaim BUHAY's second nominee.

SO ORDERED.

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

Vitug, J., reiterates his separate opinion in the ponencia (main decision).

Panganiban, J., see separate opinion.

SEPARATE OPINION

PANGANIBAN, J.:

For resolution by the Court are two sets of Motions filed by (A) BAYAN MUNA and (B) BUHAY. The majority holds that the Motions of BAYAN MUNA should be denied, but that those of BUHAY should be granted. I agree that BAYAN MUNA's Motions should be denied, but for reasons different from those proffered by the majority. On the other hand, I submit, with due respect, that BUHAY's Motions should be denied, not granted.

A. BAYAN MUNA's Motion

An examination of BAYAN MUNA's 16-page "Comment/Opposition with Motion to Set Aside the 6 November 2002 Resolution of the Commission on Elections" shows that it is principally meant to be an opposition to the "Motion to Lift TRO" filed by BUHAY and COCOFED. However, at the latter part thereof (from page 13), it argues that "COMELEC erred in disregarding the ruling in *Veterans Federation Party v. Commission on Elections*^[1] when it allocated seats in Congress for APEC, AKBAYAN, BUTIL, CIBAC, BUHAY, AMIN, ABA, COCOFED, NCIA, PM and SANLAKAS in the assailed Resolution dated 6 November 2002." Thus, aside from opposing the BUHAY and COCOFED Motion, it additionally prays for the setting aside of the said 6 November 2002 COMELEC Resolution.

In a "Supplemental Motion to Set Aside Comelec Resolution No. NBC-02-001 promulgated on 22 November 2002," BAYAN MUNA contends that this latter Resolution of 22 November 2002 - which granted two additional seats to APEC and one additional seat each to BUTIL, CIBAC and AKBAYAN, -- is also void for having likewise been issued in violation of the ruling in *Veterans* and the proportional representation proviso of RA 7941 (the Party List Law), which limited the entitlement of a party-list winner to a maximum of three seats. It complains that this COMELEC Resolution "equalized APEC's number of representatives with those" of BAYAN MUNA despite the "disparity in the number of votes between them - 1,697,578 for BAYAN MUNA as against 801,587 for APEC."

Thus, it prays for the declaration of (1) the nullity of the said 22 November 2002 COMELEC Resolution; and (2) the unconstitutionality of Section 11 of RA 7941 (the Party List Law), insofar as it allowed a maximum of only three seats per party-list winner, to enable BAYAN MUNA to have more than three representatives in the House.

Assailed COMELEC Resolutions Made Without Authority

In its Resolution dated 18 February 2003, the Court has already unanimously ruled that the assailed COMELEC Resolutions dated 6 November 2002 and 22 November 2003 as well as that dated 26 November 2002 were issued by Commission without any authority, in "brazen disobedience to [this Court's] lawful directives, in particular its Temporary Restraining Order dated May 9, 2001." For issuing such Resolutions, the COMELEC chairman and members were held in contempt by this Court.