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G.R. No. 192803 (*Alliance for Rural and Agrarian Reconstruction, Inc., also known as ARARO Party List v. Commission on Elections*)

Promulgated:

DECEMBER 10, 2013

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CONCURRING AND DISSENTING OPINION

VELASCO, JR., *J.*:

The sole issue in the present case revolves around the application of the phrase "total votes cast for the party-list system" in Republic Act No. (RA) 7941, otherwise known as the "Party-List System Act."

Petitioner is of the position that the phrase refers to the total number of voters who actually voted less the number of votes for party list organizations (PLOs) disqualified before the actual elections. In other words, petitioner maintains that "votes that were spoiled or were not made for any party list" as well as votes cast in favor of PLOs disqualified after the actual elections must be counted in determining the "total votes cast for the party-list system." Respondent, on the other hand, maintains otherwise arguing that only "valid votes" and votes cast in favor of PLOs not otherwise declared disqualified should be included in the "total votes cast for the part-list system."

The issue is of particular significance as its resolution determines the proper divisor of the formula applied in *BANAT v. COMELEC*[1] to determine a PLO's percentage of votes garnered and thus its entitlement to a seat or two in congress. It is, therefore, of utmost relevance that the present petition is given the proper consideration by this Court.

I agree that the divisor representing the "total votes cast for the party-list system" should include valid votes cast for PLOs disqualified with finality after the day of elections but not PLOs disqualified with finality before the day of elections.

Whether preceded by the adverb "under," used in Section 6 of RA 7941, or the preposition "for," used in Sections 11 and 12 of RA 7941, the "party-list system" still refers to a mechanism of proportional representation in the election of representatives from "national, regional and sectoral parties or organizations or coalitions thereof **registered** with the Commission on Elections."[2] It is, therefore, necessary for the inclusion of the votes in the

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[1] G.R. No. 179271, April 21, 2009, 586 SCRA 210.
[2] RA 7941, Sec. 3. (Emphasis supplied.)

"total votes cast for the party-list system" that the PLO voted for is qualified, i.e., registered with the COMELEC, on the day of the elections. Thus, when the vote is in favor of a PLO that had been removed or cancelled under Section 6 of RA 7941 and thus disqualified with finality before the election, the vote can only be considered "stray votes" and therefore invalid; it cannot be considered as a valid vote or included in the "total votes cast for the party-list system."

Section 72 of the Omnibus Election Code, as amended by Section 6 of RA 6646, clearly provides for the effect of a disqualification on a candidate before the day of elections, which under the party-list system is a PLO:

> Sec. 6. Effect of Disqualification Case. - **Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted**. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis supplied.)

In *Cayat v. COMELEC*,[3] this Court declared as "stray" the votes cast in favor of a candidate disqualified with finality *before* the election even if his name remained in the ballot. We held, thus:

> The law expressly declares that a candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted. This is a mandatory provision of law. Section 6 of Republic Act No. 6646, The Electoral Reforms Law of 1987, states:
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> > Sec. 6. Effect of Disqualification Case.— Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. If for any reason a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, the Court or Commission shall continue with the trial and hearing of the action, inquiry, or protest and, upon motion of the complainant or any intervenor, may during the pendency thereof order the suspension of the proclamation of such candidate whenever the evidence of his guilt is strong. (Emphasis added)
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> Section 6 of the Electoral Reforms Law of 1987 covers two situations. The first is when the disqualification becomes final before the elections, which is the situation covered in the first sentence of Section 6. The second is when the disqualification becomes final after the elections, which is the situation covered in the second sentence of Section 6.
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> The present case falls under the first situation. Section 6 of the Electoral Reforms Law governing the first situation is categorical: **a**

[3] G.R. No. 163776, April 24, 2007.

> **candidate disqualified by final judgment before an election cannot be voted for, and votes cast for him shall not be counted.** The Resolution disqualifying Cayat became final on 17 April 2004, way before the 10 May 2004 elections. Therefore, all the 8,164 **votes cast in Cayat's favor are stray**. Cayat was never a candidate in the 10 May 2004 elections. Palileng's proclamation is proper because he was the sole and only candidate, second to none.
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> x x x x
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> To allow a candidate disqualified by final judgment 23 days before the elections to be voted for and have his votes counted is a blatant violation of a mandatory provision of the election law. It creates confusion in the results of the elections and invites needless new litigations from a candidate whose disqualification had long become final before the elections. The doctrine on the rejection of the second placer was never meant to apply to a situation where a candidate's disqualification had become final before the elections.

Of particular importance is this Court's June 25, 2003 Resolution in *Ang Bagong Bayani-OFW Labor Party v. COMELEC*,[4] where We emphasized the relevance of Section 10 of RA 7941, which states that "a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted x x x." This Court held that the "total votes cast for the party-list system" include only the votes cast for PLOs *qualified* to be voted on the day of election, viz:

> Legal Effect of the Disqualifications
> on the "Total Votes Cast"
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> ….. The critical question now is this: To determine the "total votes cast for the party-list system," should the votes tallied for the disqualified candidates be deducted? Otherwise stated, does the clause "total votes cast for the party-list system" include only those ballots cast for *qualified* party-list candidates?
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> To answer this question, there is a need to review related jurisprudence on the matter, especially *Labo v. Comelec* and *Grego v. Comelec*, which were mentioned in our February 18, 2003 Resolution.
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> *Labo and Grego*
> *Not Applicable*
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> In *Labo*, the Court declared that "the ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed elected to the office." In other words, the votes cast for an ineligible or disqualified candidate cannot be considered "stray."
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> However, "this rule would be different if the electorate, fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety, would nonetheless cast their votes in favor of the ineligible candidate. In such case, the electorate may be said to have

[4] G.R. Nos. 147589 & 147613, June 25, 2003, 404 SCRA 719.

waived the validity and efficacy of their votes by notoriously misapplying their franchise or throwing away their votes, in which case, the eligible candidate obtaining the next higher number of votes may be deemed elected." In short, the votes cast for a "notoriously disqualified" candidate may be considered "stray" and excluded from the canvass.

The foregoing pronouncement was reiterated in *Grego*, which held that the exception mentioned in *Labo v. Comelec* "is predicated on the concurrence of two assumptions, namely: (1) the one who obtained the highest number of votes is disqualified; and (2) the electorate is fully aware in fact and in law of a candidate's disqualification so as to bring such awareness within the realm of notoriety but would nonetheless cast their votes in favor of the ineligible candidate."

Note, however, that the foregoing pronouncements (1) referred to regular elections for local offices and (2) involved the interpretation of Section 6 of RA 6646. They were not meant to cover party-list elections, which are specifically governed by RA 7941. **Section 10 of this latter law clearly provides that the votes cast for a party, a sectoral organization or a coalition *"not entitled to be voted for shall not be counted":***

> "SEC. 10. *Manner of Voting*. — Every voter shall be entitled to two (2) votes: the first vote is a vote for candidate for membership of the House of Representatives in his legislative district, and the second, a vote for the party, organization, or coalition he wants represented in the House of Representatives: ***Provided*, That a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted**: *Provided, finally*, That the first election under the party-list system shall be held in May 1998." (Emphasis supplied)

The language of the law is clear; hence, there is room, not for interpretation, but merely for application. Likewise, no recourse to extrinsic aids is warranted when the language of the law is plain and unambiguous.

Another reason for not applying *Labo* and *Grego* is that these cases involve single elective posts, while the present controversy pertains to the acquisition of a number of congressional seats depending on the total election results — such that even those garnering second, third, fourth or lesser places could be proclaimed winners depending on their compliance with other requirements.

RA 7941 is a special statute governing the elections of party-list representatives and is the controlling law in matters pertaining thereto. Since *Labo* and Section 6 of RA 6646 came into being prior to the enactment of RA 7941, the latter is a qualification of the former ruling and law. On the other hand, *Grego* and other related cases that came after the enactment of RA 7941 should be construed as inapplicable to the latter.

Subtracting the votes garnered by these disqualified party-list groups from the total votes cast under the party-list system will reduce the base figure to 6,523,185. This means that the two-percent threshold can be more easily attained by the *qualified* marginalized and under-represented groups. Hence, **disregarding the votes of disqualified party-list participants will increase and broaden the number of representatives**

from these sectors. Doing so will further concretize and give flesh to the policy declaration in RA 7941, which we reproduce thus:

> "SEC. 2. *Declaration of Policy*. — The State shall promote proportional representation in the election of representation in the election of representatives to the House of Representatives through a party-list system of registered, national and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the 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."

It is therefore in keeping with both the spirit and language of the law on the party-list system that the votes cast in favor of PLOs disqualified with finality *before* the day of the election be considered invalid and not included in the computation of the "total votes cast for the party-list system."

On this note, We must consider the fact of final disqualification of the PLO before the day of election as enough to consider the votes cast in favor of the disqualified PLO as stray votes. The proviso stated in the *ponencia* that the "disqualification [must be] reasonably made known by the [COMELEC] to the voters prior to such elections"[5] is without legal basis and only serves to weaken Our ruling in *Cayat*.

To rule that the votes cast in favor of PLOs disqualified with finality prior to the elections are to be excluded from the divisor only "if the electorate is notified of the finality of their disqualification"[6] places the exclusion of these votes on the notoriety of the disqualification of these PLOs. Clearly, this contravenes our ruling in *Cayat* and similar cases where this Court refused to apply the presumption that the voters remained in the belief that the disqualified PLO is qualified.

The obscurity of the final disqualification of these PLOs before the day of elections cannot be used as a reason to recognize the validity of their inclusion in the ballot. Otherwise, the qualifications set for PLOs to validly participate in the elections will all be for naught and this Court will only be encouraging nuisance PLOs to participate in the election and dilute the percentage votes cast for the qualified PLOs, even denying some of the opportunity to achieve the 2% winning minimum percentage threshold. After all, as provided in the *ponencia*, a decision of disqualification, regardless of the date of its finality, does not affect its inclusion in the divisor "if not reasonably made known by the COMELEC." Clearly, this

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[5] *Ponencia*, p. 24.
[6] Id. at 23.

cannot be allowed. At the very least, the *ponencia* should have provided sufficient parameters that will enable the COMELEC to comply with the proviso. Otherwise, the nebulous qualification in the proviso renders the rule open to various interpretations and possible circumvention. Indeed, the fact that a disqualified PLO's name remains on the ballot on the day of the election can be used to assert that the COMELEC has not "reasonably" informed the electorate of the disqualification.

Thus, I vote that the modification of the divisor in the formula for determining the winning PLOs in *BANAT v. COMELEC* shall be limited only to include the votes cast for PLOs whose names are in the ballot but are disqualified *after* the elections. Spoiled, invalid and stray votes, as well as votes cast in favor of PLOs whose names are in the ballot but were disqualified with finality *before* the day of election shall remain excluded in the computation of the "total votes cast for the party-list system." The final disqualification of a PLO prior to the day of the election, without more, is sufficient to render the votes cast in its favor as stray votes and excluded from the "total votes cast for the party-list system."

PRESBITERO J. VELASCO, JR.
Associate Justice