

EN BANC

G.R. No. 246816 (*ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA), and Serbisyo sa Bayan Party (SBP) v. Commission on Elections (Sitting as the National Board of Canvassers), Chairman Sheriff M. Abas, Commissioner Al A. Parreño, Commissioner Luie Tito F. Guia, Commissioner Ma. Rowena Amelia V. Guanzon, Commissioner Socorro B. Inting, Commissioner Marlon S. Casquejo, and Commissioner Antonio T. Kho, Jr.*)

Promulgated: December 7, 2021

X-----*Antonio T. Kho*-----X

SEPARATE CONCURRING AND DISSENTING OPINION

DIMAAMPAO, J.:

In fealty to its judicial duty, this Court in the case of *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections (COMELEC)*,¹ laid down doctrinal mooring which has its textual hook in Section 11(b) of Republic Act (R.A.) No. 7941, *viz.*:

Section 11. Number of Party-List Representatives. 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.”

Dubbed as the *BANAT* Formula, the jurisprudential precept ordains—

Round 1:

- a. The participating parties, organizations or coalitions shall be ranked from highest to lowest based on the number of votes they each garnered in the party-list election.
- b. Each of those receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to and guaranteed one seat each.

Round 2, Part 1:

- a. The percentage of votes garnered by each of the parties, organizations and coalitions is multiplied by the remaining

¹ G.R. No. 179271, 21 April 2009.

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available seats after Round 1. All party-list participants shall participate in this round regardless of the percentage of votes they garnered.

- b. The party-list participants shall be entitled to additional seats based on the product arrived at in (a). The whole integer of the product corresponds to a party's share in the remaining available seats. Fractional seats shall not be awarded.
- c. A party-list shall not be awarded no more than two additional seats.

Round 2, Part 2:

- a. The party-list party, organization or coalition next in rank shall be allocated one additional seat each until all available seats are completely distributed.²

In the case at bench, the petitioners impugned the constitutionality of Section 11(b) of RA 7941 particularly the portion which 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 Round 2 in proportion to their total number of votes. As it happened, this Court sustained the constitutionality of the assailed provision.

Taking umbrage at the Court's disposition, petitioners intransigently assert via the present *Motion for Reconsideration* that such manner of allocating additional seats violates the "one person, one vote" policy protected under the equal protection clause and our democratic institutions.

I concur with the ponente's denial of the Petitioners' Motion for Reconsideration.

As clearly elucidated in the *ponencia*, there is no double-counting of votes under the *BANAT* Formula since the system of counting pertains to two different rounds and for two different purposes.³ Each party-list earns a seat as it hurdles the threshold in each round. However, each vote is counted only once for both rounds.

It cannot be stressed enough that in Round 2, Part 1, all the votes garnered by the two-percenters are considered in the computation **not to count them anew but only to give flesh to the principle of proportionality as laid down in Section 11 (b) of RA No. 7941. To deduct the votes amounting to 2% from the total votes of the party-list groups that have been entitled to and given guaranteed seats before they could participate in Round 2, Part 1, would run roughshod over the ratio *decidendi* of the principle of proportionality.**

² G.R. No. 246816, 15 September 2020.

³ Round 1 is for purposes of applying the 2% threshold and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while Round 2 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, thus, seats are computed in proportion to a party-list's total number of votes.

Be that as it may, I humbly opine that the allocation of additional seat in Round 2, Part 2 of the *BANAT* Formula deserves a second hard look. Since the seats are allocated to party-list party, organization or coalition which are next in rank, they received their proportionate share in the remaining seats through the percentage of their votes after computation is less than one, *i.e.*, in fraction. This being so, I join Justice Mario Lopez in his separate opinion wherein he brought to the fore the inaccuracy of the *BANAT* Formula in Round 2, Part 2 of the party-list seat allocation.

In explication, I proffer the following postulations.

The table below evinces the seats allocated to parties, organizations, and coalitions using the *BANAT* Formula in the 2019 elections:

RANK	ACRONYM	% OF TOTAL VOTES	SEATS IN ROUND 1 ⁴	PROPORTIONATE SHARE IN REMAINING SEATS	SEATS IN ROUND 2, PART 1 ⁵	SEATS IN ROUND 2, PART 2	TOTAL SEATS
1	ACT-CIS	9.51%	1	5.0403	2	0	3
2	BAYAN MUNA	4.01%	1	2.1253	2	0	3
3	AKO BICOL	3.76%	1	1.9928	1	0	2
4	CBAC	3.33%	1	1.7490	1	0	2
5	ANG PROBINSYANO	2.76%	1	1.4628	1	0	2
6	I PACMAN	2.56%	1	1.3568	1	0	2
7	MARINO	2.44%	1	1.2932	1	0	2
8	PROBINSYANO AKO	2.26%	1	1.1978	1	0	2
9	SENIOR CITIZENS	1.85%	0	0.9805	0	1	1
10	MAGSASAKA	1.78%	0	0.9434	0	1	1
11	APEC	1.72%	0	0.9116	0	1	1
12	GABRIELA	1.61%	0	0.8533	0	1	1
13	AN WARAY	1.59%	0	0.8427	0	1	1
14	COOP-NATTCO	1.50%	0	0.7950	0	1	1
15	ACT TEACHERS	1.42%	0	0.7526	0	1	1
16	PHILRECA	1.42%	0	0.7526	0	1	1
17	AKO BISAYA	1.41%	0	0.7473	0	1	1
18	TINGOG SINIRANGAN	1.40%	0	0.7420	0	1	1
19	ABONO	1.36%	0	0.7208	0	1	1
20	BUHAY	1.30%	0	0.6890	0	1	1
21	DUTERTE YOUTH	1.27%	0	0.6731	0	1	1
22	KALINGA	1.22%	0	0.6466	0	1	1
23	PBA	1.17%	0	0.6201	0	1	1
24	ALONA	1.15%	0	0.6095	0	1	1
25	RECOBODA	1.14%	0	0.6042	0	1	1
26	BH (BAGONG HENERASYON)	1.04%	0	0.5512	0	1	1

⁴ Guaranteed seats based on the 2% threshold.

⁵ The greatest number of seats that can be allocated in Round 2, Part 1 is two seats in view of the three-seat cap.

27	BAHAY	1.01%	0	0.5353	0	1	1
28	CWS	1.00%	0	0.5300	0	1	1
29	ABANG LINGKOD	0.99%	0	0.5247	0	1	1
30	A TEACHER	0.98%	0	0.5194	0	1	1
31	BHW	0.97%	0	0.5141	0	1	1
32	SAGIP	0.92%	0	0.4876	0	1	1
33	TUCP	0.92%	0	0.4876	0	1	1
34	MAGDALO	0.91%	0	0.4823	0	1	1
35	GP	0.89%	0	0.4717	0	1	1
36	MANILA TEACHERS'	0.89%	0	0.4717	0	1	1
37	RAM	0.85%	0	0.4505	0	1	1
38	ANAKALUSUGAN	0.85%	0	0.4505	0	1	1
39	AKO PADAYON	0.84%	0	0.4452	0	1	1
40	AAMBIS-OWA	0.84%	0	0.4452	0	1	1
41	KUSUG TAUSUG	0.82%	0	0.4346	0	1	1
42	DUMPER PTDA	0.80%	0	0.4240	0	1	1
43	TGP	0.78%	0	0.4134	0	1	1
44	PATROL	0.78%	0	0.4134	0	1	1
45	AMIN	0.76%	0	0.4028	0	1	1
46	AGAP	0.75%	0	0.3975	0	1	1
47	LPGMA	0.75%	0	0.3975	0	1	1
48	OFW FAMILY	0.72%	0	0.3816	0	1	1
49	KABAYAN	0.71%	0	0.3763	0	1	1
50	DIWA	0.70%	0	0.3710	0	1	1
51	KABATAAN	0.70%	0	0.3710	0	1	1

Under the *BANAT* Formula, only the whole integer is considered with respect to the proportionate share in the remaining seats of *AKO BICOL*, *CBAC*, *ANG PROBINSYANO*, *PACMAN*, *MARINO*, and *PROBINSYANO AKO*, in the absence of a provision allowing the rounding-off of fractional seats. All the same, for Round 2, Part 2 of the party-list seat allocations, one seat is allocated to each party *next in rank*, *i.e.*, those with a product⁶ of less than one, until all seats are completely distributed.

Inevitably, this results in a preposterous situation in that the aforesaid six parties with a product of more than one but *with* fractional seats as represented by the decimal values were precluded from participating in Round 2, Part 2 of the seat allocation even though they have not breached the three-seat limit, while the others with only fractional seats as represented by decimal values were considered and in fact were allotted seats. Simply put, fractional seats were not awarded for the six parties, whereas *parties next in rank* were granted therefor.

Quite palpably, such distribution is antithetical to the principle of proportionality required by the law. This could have been avoided if the Niemeyer Formula as proposed by Justice M. Lopez was uniformly applied to

⁶ Or the proportionate share in the remaining seats; refers to the product of the party's percentage of the total party-list vote and remaining available seats.

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all the parties in determining which parties are next in rank for the allocation of the last remaining seats. For the 2019 party-list seat allocations, this would have resulted in *AKO BICOL*, *CBAC*, and *ANG PROBINSYANO* receiving a total of three party-list seats each. The remaining party-list seats would have been allocated in this wise:

ACRONYM	Remaining Fractional Seat (applying the Niemeyer Formula)	Ranking under <i>BANAT</i> Formula	Ranking applying the Niemeyer Formula	Seats from Previous Allocation ⁷	Round 2, Part 2 Seat Allocation	Total Seats
AKO BICOL	0.9928	3	1	2	1	3
SENIOR CITIZENS	0.9805	9	2	0	1	1
MAGSASAKA	0.9434	10	3	0	1	1
APEC	0.9116	11	4	0	1	1
GABRIELA	0.8533	12	5	0	1	1
AN WARAY	0.8427	13	6	0	1	1
COOP-NATTCO	0.795	14	7	0	1	1
CBAC	0.749	4	8	2	1	3
ACT TEACHERS	0.7526	15	9	0	1	1
PHILRECA	0.7526	16	10	0	1	1
AKO BISAYA	0.7473	17	11	0	1	1
TINGOG SINIRANGAN	0.742	18	12	0	1	1
ABONO	0.7208	19	13	0	1	1
BUHAY	0.689	20	14	0	1	1
DUTERTE YOUTH	0.6731	21	15	0	1	1
KALINGA	0.6466	22	16	0	1	1
PBA	0.6201	23	17	0	1	1
ALONA	0.6095	24	18	0	1	1
RECOBODA	0.6042	25	19	0	1	1
BH (BAGONG HENERASYON)	0.5512	26	20	0	1	1
BAHAY	0.5353	27	21	0	1	1
CWS	0.53	28	22	0	1	1
ABANG LINGKOD	0.5247	29	23	0	1	1
A TEACHER	0.5194	30	24	0	1	1
BHW	0.5141	31	25	0	1	1
SAGIP	0.4876	32	26	0	1	1
TUCP	0.4876	33	27	0	1	1
MAGDALO	0.4823	34	28	0	1	1
GP	0.4717	35	29	0	1	1
MANILA TEACHERS'	0.4717	36	30	0	1	1
ANG PROBINSYANO	0.4628	5	31	2	1	3
RAM	0.4505	37	32	0	1	1
ANAKALUSUGAN	0.4505	38	33	0	1	1
AKO PADAYON	0.4452	39	34	0	1	1

⁷ Refers to total seats allocated to the party-list in Round 1 and Round 2, Part 1.

AAMBIS-OWA	0.4452	40	35	0	1	1
KUSUG TAUSUG	0.4346	41	36	0	1	1
DUMPER PTDA	0.424	42	37	0	1	1
TGP	0.4134	43	38	0	1	1
PATROL	0.4134	44	39	0	1	1
AMIN	0.4028	45	40	0	1	1
AGAP	0.3975	46	41	0	1	1
LPGMA	0.3975	47	42	0	1	1
OFW FAMILY	0.3816	48	43	0	1	1

IN LIGHT OF THE FOREGOING, I concur with the dismissal of the *Motion for Reconsideration*. As adumbrated above, I join Justice M. Lopez in his submission to revisit the treatment of fractional seats in obeisance to the principle of proportionality. In so doing, this Court merely corrects the application of the *BANAT* Formula without encroaching upon the powers of the legislature.


JAPAR B. DIMAAMPAO
Associate Justice