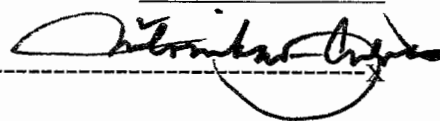


EN BANC

G.R. No. 268546 — AN WARAY PARTY-LIST represented by **Florencio Gabriel “Bem” Noel, and VICTORIA ISABEL NOEL**, in her own personal capacity, *Petitioners*, v. **COMMISSION ON ELECTIONS, DANILO T. PORNIAS, and JUDE A. ACIDRE**, *Respondents*.

Promulgated:

August 6, 2024



x-----

DISSENT

LAZARO-JAVIER, J.:

The *Majority* denied the Petition for *Certiorari* and decreed that the Commission on Elections (COMELEC) had jurisdiction over the petition to cancel the registration of AN WARAY Party-list (AN WARAY) and correctly ordained that such cancellation was in order. The *Majority* thus adopted the finding of the COMELEC that AN WARAY arrogated unto itself the authority to have its 2nd nominee Victoria Isabel Noel (Victoria) take her oath and assume office in the House of Representatives despite knowing that it was only entitled to one seat during the 2013 National and Local Elections (NLE) per NBOC Resolution No. 13-030 (PL)/0004-14; and on top of violating Section 6 (5)¹ of Republic Act No. 7941,² it also violated NBOC Resolution No. 13-030 (PL)/0004-14, ordaining that it was only entitled to one seat in the final distribution of seats to party-list candidates. Further, the *Majority* ruled that the COMELEC did not violate AN WARAY’s right to a speedy disposition of its case.

The Court bears the duty of harmonizing provisions of law in order to give full effect to the true intent of the Constitution, the highest law of the land. This task holds special importance in election cases to ensure that, to the extent that it is legally permissible, the will of the electorate, as expressed through the democratic process, is not frustrated. I must, therefore, respectfully diverge from the opinion of the *Majority*.

¹ Section 6. *Refusal and/or Cancellation of Registration.* The COMELEC may, motu proprio or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:
(5) It violates or fails to comply with laws, rules or regulations relating to elections;

² Otherwise known as the Party-List System Act.

The COMELEC did not have jurisdiction over the petition for cancellation of AN WARAY's party-list registration which directly affects its membership in the Larger House

On one hand, AN WARAY posited that jurisdiction over the dispute properly belonged to the House of Representatives Electoral Tribunal (HRET), involving as it did the qualifications of first, a former member, and, second, an incumbent member of the House of Representatives. On the other hand, respondents countered that the COMELEC had the power to hear and decide the case, framing it as one simply involving the cancellation of AN WARAY's registration as a party-list.

The delineation between the jurisdictions of the two adjudicatory bodies has long been settled by the Constitution and jurisprudence.

a. COMELEC's constitutional and statutory authority

It is not disputed that COMELEC exercises jurisdiction over matters concerning the registration of party-list organizations. Thus, Article IX-C, Section 2(5) of the Constitution relevantly reads:

Section 2. The Commission on Elections shall exercise the following powers and functions:

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration. . . .

This is enforced under Section 5 of Republic Act No. 7941, viz.:

Section 5. Registration. Any organized group of persons may register as a party, organization, or coalition for purposes of the party-list system by filing with the COMELEC not later than ninety (90) days before the election a petition verified by its president or secretary stating its desire to participate in the party-list system as a national, regional or sectoral party or organization or a coalition of such parties or organizations, attaching thereto its constitution, by-laws, platform or program of government, list of officers, coalition agreement and other relevant information as the COMELEC may require; Provided, That the sectors shall include labor,

peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals.

The COMELEC shall publish the petition in at least two (2) national newspapers of general circulation.

The COMELEC shall, after due notice and hearing, resolve the petition within fifteen (15) days from the date it was submitted for decision but in no case not later than sixty (60) days before election.

Per Section 6 of the same law, COMELEC is further vested with the power to refuse or cancel the registration of party-list organizations *viz.*:

Section 6. Refusal and/or Cancellation of Registration. The COMELEC may, *motu proprio* or upon verified complaint of any interested party, refuse or cancel, after due notice and hearing, the registration of any national, regional or sectoral party, organization or coalition on any of the following grounds:

- (1) It is a religious sect or denomination, organization or association, organized for religious purposes;
- (2) It advocates violence or unlawful means to seek its goal;
- (3) It is a foreign party or organization;
- (4) It is receiving support from any foreign government, foreign political party, foundation, organization, whether directly or through any of its officers or members or indirectly through third parties for partisan election purposes;
- (5) It violates or fails to comply with laws, rules or regulations relating to elections;
- (6) It declares untruthful statements in its petition;
- (7) It has ceased to exist for at least one (1) year; or
- (8) It fails to participate in the last two (2) preceding elections or fails to obtain at least two per centum (2%) of the votes cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.

In determining whether the action for cancellation of AN WARAY's registration is truly in accord with the caption of the case and how it has been denominated, it is necessary to take stock of the real nature of the controversy. At its core, it specifically delved into the *qualifications* of the incumbent AN WARAY itself which appeared in the Larger House through its agent, Representative Noel.

Notably, AN WARAY was a sitting Representative in the Larger House. Disqualifying the incumbent AN WARAY was a declaration of a House Member's *lack of qualifications*. It did not speak only of effects but of original causes that fall under Article VI, Section 17 of the 1987 Constitution and within the sole, exclusive, and absolute jurisdiction of the HRET.

b. HRET Constitutional Jurisdiction

The Constitution dictates that when it comes to contests relating to the election, returns, and *qualifications* of members of the House of Representatives, jurisdiction belongs *solely* to the HRET, *viz.*:³

SECTION 17. The Senate and the **House of Representatives shall each have an Electoral Tribunal** which shall be the **sole judge of all contests relating to the election, returns, and qualifications of their respective Members**. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. (Emphases supplied)

On this score *Abayon v. HRET*⁴ unequivocally instructs that the constitutional power of the HRET to decide all contests involving its members must be construed in such a manner as to render the same complete and unimpaired, *viz.*:

The Court agrees that the power of the HRET to annul elections differ from the power granted to the COMELEC to declare failure of elections. **The Constitution no less, grants the HRET with exclusive jurisdiction to decide all election contests involving the members of the House of Representatives, which necessarily includes** those which raise the issue of fraud, terrorism or other irregularities committed before, during or after the elections. To deprive the HRET of the prerogative to annul elections would undermine its constitutional fiat to decide election contests. **The phrase “election, returns and qualifications” should be interpreted in its totality as referring to all matters affecting the validity of the contestee’s title.** Consequently, the annulment of election results is but a power concomitant to the HRET’s constitutional mandate to determine the validity of the contestee’s title.

The power granted to the HRET by the Constitution is intended to be as complete and unimpaired as if it had remained originally in the legislature. . . . (Emphases supplied, citations omitted)

This exclusive jurisdiction of the HRET has been invariably affirmed by the Court in several cases,⁵ and made equally applicable to nominees of

³ CONST., art. VI, sec. 17.

⁴ 785 Phil. 683 (2016) [Per J. Mendoza, Special *En Banc*].

⁵ *Abayon v. HRET*, 626 Phil. 346 (2020) [Per J. Abad, *En Banc*], *Bello v. COMELEC*, 651 Phil. 351 (2020) [Per J. Brion, *En Banc*], *Lico v. COMELEC*, 770 Phil. 445 (2015) [Per C.J. Sereno, *En Banc*], *Limkaichong v. COMELEC*, 601 Phil. 751 (2009) [Per J. Peralta, *En Banc*], *Señeres v. COMELEC*, 603 Phil. 552 (2009) [Per J. Velasco, Jr., *En Banc*], *Vinzons-Chato v. COMELEC*, 548 Phil. 712 (2007) [Per J. Callejo, Sr., *En Banc*], *Aggabao v. COMELEC*, 490 Phil. 285 (2005) [Per J. Ynares-Santiago, *En Banc*], *Guerrero v. COMELEC*, 391 Phil. 344 (2000) [Per J. Quisumbing, *En Banc*], *Perez v. COMELEC*,

winning party-lists who would eventually sit in the House of Representatives. The Court has long recognized that voters cast their votes in favor of the party-list organization during elections, and ultimately, the votes redound to *both* the party-list organization and their nominee, the first becoming a full-fledged member of the House of Representatives through the agency of the nominee.

c. HRET Jurisdiction over the Qualifications of an Incumbent Party-List Member of the House of Representatives

It is my position that the Court cannot confer *carte blanche* jurisdiction upon the COMELEC when it exercises its statutory role of cancelling party-list registration and accreditation. This is especially true when the distinction between the original cause (cancellation of party-list registration and accreditation) and the end-result (cessation of representation in the House of Representatives for both the party-list representative and their agent) is the outcome. Instead, the Court must harmonize and limit COMELEC's statutory power with the jurisdiction of HRET because the latter has roots in the Constitution.

In *Reyes v. HRET*,⁶ the Court pronounced that to be considered a member of the House, the following requisites must be present: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office. Once all these requisites are met, jurisdiction over contests relating to the qualifications of the party-list representative shifts from the COMELEC to the HRET in accordance with Article VI, Section 17 of the Constitution.

To harmonize the undisputable jurisdiction of the COMELEC to cancel party-list registration, on the one hand, and the exclusive jurisdiction of the HRET over the election, returns, and *qualifications* of members of the House of Representatives, on the other, **it must be clarified that while the COMELEC may pass upon the question of whether a party-list organization has violated or failed to comply with election laws and consequently cancel its registration as a party-list organization, this jurisdiction only subsists for so long as the party list organization concerned has not been duly proclaimed; and has not as yet taken its oath through its nominee; and has not assumed its office as a member of the House of Representatives.** As soon as these three requisites have been accomplished, jurisdiction must already lie with the HRET.

To be sure, qualifying the jurisdiction of the COMELEC over matters that have the effect of removing a member of the House of Representatives is not novel. In *Lico v. COMELEC*,⁷ we held that while the COMELEC has

375 Phil. 1106 (1999) [Per J. Mendoza, *En Banc*], *Lazatin v. HRET*, 250 Phil. 390 (1988) [Per J. Cortes, *En Banc*].

⁶ 842 Phil. 133 (2018) [Per J. Carpio, *En Banc*].

⁷ *Lico v. COMELEC*, 770 Phil. 444 (2015) [Per C. J. Sereno, *En Banc*].

jurisdiction over intra-party matters, considering, however, that Lico was already a member of the House of Representatives at the time of his expulsion from the party-list, the matter was no longer within the jurisdiction of the COMELEC, thus:⁸

The COMELEC notably characterized the Petition for expulsion of petitioner Lico from the House of Representatives and for the succession of the second nominee as party-list representative as a disqualification case. For this reason, the COMELEC dismissed the petition for lack of jurisdiction, insofar as it relates to the question of unseating petitioner Lico from the House of Representatives.

Section 17, Article VI of the 1987 Constitution endows the HRET with jurisdiction to resolve questions on the qualifications of members of Congress. In the case of party-list representatives, the HRET acquires jurisdiction over a disqualification case upon proclamation of the winning party-list group, oath of the nominee, and assumption of office as member of the House of Representatives. In this case, the COMELEC proclaimed Ating Koop as a winning party-list group; petitioner Lico took his oath; and he assumed office in the House of Representatives. Thus, it is the HRET, and not the COMELEC, that has jurisdiction over the disqualification case.

What We find to be without legal basis, however, is the action of the COMELEC in upholding the validity of the expulsion of petitioner Lico from Ating Koop, despite its own ruling that the HRET has jurisdiction over the disqualification issue. These findings already touch upon the qualification requiring a party-list nominee to be a *bona fide* member of the party-list group sought to be represented.

The COMELEC justified its Resolution on the merits of the expulsion, by relying on the rule that it can decide intra-party matters as an incident of its constitutionally-granted powers and functions. It cited *Lokin v. COMELEC*, where We held that when the resolution of an intra-party controversy is necessary or incidental to the performance of the constitutionally-granted functions of the COMELEC, the latter can step in and exercise jurisdiction over the intra-party matter. The *Lokin* case, however, involved *nominees* and not incumbent *members* of Congress. In the present case, the fact that petitioner Lico was a member of Congress at the time of his expulsion from Ating Koop removes the matter from the jurisdiction of the COMELEC.

The rules on intra-party matters and on the jurisdiction of the HRET are not parallel concepts that do not intersect. Rather, the operation of the rule on intra-party matters is circumscribed by Section 17 of Article VI of the 1987 Constitution and jurisprudence on the jurisdiction of electoral tribunals. The jurisdiction of the HRET is exclusive. It is given full authority to hear and decide the cases on any matter touching on the validity of the title of the proclaimed winner.

In the present case, the Petition for petitioner Lico's expulsion from the House of Representatives is anchored on his expulsion from Ating Koop, which necessarily affects his title as member of Congress. A party-list nominee must have been, among others, a *bona fide* member of the party or organization for at least ninety (90) days preceding the day of

⁸ *Id.*

the election. Needless to say, *bona fide* membership in the party-list group is a **continuing** qualification. We have ruled that qualifications for public office, whether elective or not, are continuing requirements. They must be possessed not only at the time of appointment or election, or of assumption of office, but during the officer's **entire** tenure.

This is not the first time that this Court has passed upon the issue of HRET jurisdiction over the requirements for *bona fide* membership in a party-list organization. In *Abayon v. HRET*, it was argued that the petitioners did not belong to the marginalized and under-represented sectors that they should represent; as such, they could not be properly considered *bona fide* members of their respective party-list organizations. **The Court held that it was for the HRET to interpret the meaning of the requirement of *bona fide* membership in a party-list organization. It reasoned that under Section 17, Article VI of the *Constitution*, the HRET is the sole judge of all contests when it comes to qualifications of the members of the House of Representatives.**

Consequently, the COMELEC failed to recognize that the issue on the validity of petitioner Lico's expulsion from Ating Koop is integral to the issue of his qualifications to sit in Congress. This is not merely an error of law but an error of jurisdiction correctible by a writ of *certiorari*; the COMELEC should not have encroached into the expulsion issue, as it was outside its authority to do so. (Emphases supplied, citations omitted)

The COMELEC has jurisdiction to decide intra-party matters incidental to its constitutionally granted powers and functions. But since **Ating Koop** was already an incumbent party-list, and petitioner Lico, its sitting agent in Congress at the time of his expulsion from Ating Koop, its status as such removed the matter from the jurisdiction of the COMELEC. Thus, the operation of the rule on intra-party matters has been circumscribed by Article VI, Section 17 of the Constitution which grants exclusive jurisdiction to the HRET to resolve questions on the elections, returns, and qualifications of members of Congress.

But in *Lico*, the controversy affected only the **agent** of the incumbent party-list. Here, it is the incumbent representative itself—the party-list chosen by the electorate—which is affected. With more reason, therefore, should the jurisdiction of the HRET be upheld here where the controversy affected not a mere agent but the principal itself.

Similar to *Lico*, the cancellation of AN WARAY's party-list registration necessarily affected its title, and that of its nominee, Representative Noel, as a member of the House of Representatives, on the basis of Victoria's actions that COMELEC has imputed to AN WARAY ultimately as the alleged violator. In cancelling AN WARAY's registration, COMELEC failed to acknowledge that this issue was integral to the qualifications of AN WARAY and its agent as an incumbent member of Congress.

The cancellation of AN WARAY's registration directly affected this party-list organization's standing in the Larger House and therefore its *qualifications* as a sitting Representative, including those of its past and current nominees. The nominee's membership in the House of Representatives is derived from the election of the party-list itself. Not only is the nominee's continued membership in the party-list a continuing requirement,⁹ the party-list organization itself must continue to be qualified to hold a seat in the House of Representatives. This qualification is intertwined with the status of the party-list as a **registered organization**, thus:

SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of **registered** national, regional, and sectoral parties or organizations.¹⁰

The issue pertaining to the qualifications of AN WARAY as a party-list organization transcended and involved its qualifications to sit as a member of the Larger House through its nominee or nominees during the 2013 and 2016 NLEs, on one hand, and the fairly recent 2022 NLE on the other. To reiterate, therefore, the case properly falls within the exclusive jurisdiction of the HRET and not the COMELEC.

The *Majority* nonetheless held that the effect of the cancellation of a party-list's registration should not determine which tribunal exercises jurisdiction over the case. Plainly, since the issue referred to the cancellation of AN WARAY's registration, which is within the COMELEC's constitutionally allocated powers, it validly assumed jurisdiction over the case *regardless* of the consequences of such cancellation.¹¹

I beg to differ. As explained, the alleged violation of election laws by AN WARAY 11 years ago cannot be treated independently of its qualifications to continue as a Member of the House Representative and the rights of its nominee to sit on its behalf in House proceedings. More so considering that when AN WARAY was voted upon by the electorate last election, its registration as a party-list organization was validly subsisting and wholly intact. Hence, the sudden cancellation of its registration later cannot be simply separated from its causes and effects particularly on the sovereign people who cast their votes in favor of AN WARAY to be their representative in Congress, believing that AN WARAY was duly accredited and registered.

⁹ *Id.*

¹⁰ CONST., art. VI, sec. 5(1).

¹¹ *Ponencia*, p. 18.

Certainly, where AN WARAY had already been proclaimed, taken its oath, and assumed its office in the House of Representatives, jurisdiction over its qualifications got vested in the HRET. This jurisdiction was not negated nor moved back to the COMELEC by simply reverting to the time AN WARAY had not been proclaimed yet, had not taken its oath yet, and had not assumed its office yet – precisely because the real respondent is not the nominee but the party-list organization who at the same time was an incumbent Representative. Captioning the cause of action as one for cancellation of registration does not change the challenge to its qualifications as a member of the Larger House, which triggers the HRET's jurisdiction. In any case, this is not a matter of merely determining jurisdiction based on the effect of the case. Rather, as it is the party-list itself which is a member of the Larger House, it is in fact a matter involving faithful adherence to the Constitution.

The *Majority* further held that this jurisdiction of the HRET was limited to an election contest relating to the qualifications of a *member* of the House, i.e., an action specifically to oust such member. It did not include the qualifications of the party-list itself because it is the *nominee*, and not the party-list, who is the Member of the House. Thus, the COMELEC retained jurisdiction over the petition to cancel AN WARAY's party-list registration.¹²

Again, I disagree. To repeat, the member of the Larger House is the party-list organization. The nominee is their agent in the House – obviously because an artificial person cannot move on its own. An attack against the qualifications of a nominee is no different from a challenge against the registration or accreditation of a winning party-list organization. Both actions refute the qualifications of one who is a member of the House whether by virtue of election-at-large or nomination. Article VI, Section 17 of the Constitution plainly reads, "...all contests relating to the election, returns, and **qualifications** of their respective Members", pure and simple.

What should rather be brought to the fore is the rationale in upholding the jurisdiction of the HRET over that of the COMELEC in these cases. According to *Lico*, "[t]he jurisdiction of the HRET is exclusive. It is given full authority to hear and decide the cases on *any matter touching on the validity of the title of the proclaimed winner*." Now, the question: does the legality of COMELEC's cancellation of AN WARAY's registration "touch on" the validity of its title as a member of the Larger House? The resounding answer is "yes". For how can a party-list validly hold title to a congressional seat without it being entitled thereto?

With due respect, to sidestep the membership of the party-list in the Larger House might be an unsafe way of construing the power of the HRET. It might be discriminatory against party-list organizations which are

¹² *Id.* at 14–16.

incumbent representatives. This distinction is based on the perception that party-list Representatives are different from District Representatives.

There are many ways to skin a cat, so to speak. So too are there numerous remedies available to achieve the same result. A cancelled party-list registration can as easily remove a political opponent from his or her congressional seat as—or perhaps, even more—easily than a *quo warranto* petition. To illustrate:

Party A wishes to oust its opponent, Party B, from Congress, but Party B as well as its nominee is fully qualified to sit in the House of Representatives. Meantime, the prescriptive period to file such election contest before the HRET had expired. In such a case, a direct *quo warranto* petition against Party B would definitely not prosper. Knowing this, Party A would obviously not choose to file a *quo warranto* case before the HRET.

What it cannot do before the HRET, it can, however, do easily before the COMELEC through a petition for cancellation of Party B's registration based on some past "infractions" and for a far longer prescriptive period. Once Party B is disenfranchised, it would consequently lose its seat in the House of Representatives and its nominee, resultantly, ousted. In sum, Party A would have been able to achieve the same result as if it had filed and won a *quo warranto* case before the HRET.

At the end of the day, the House of Representatives will still be a couple of members few. A constricted construction of the jurisdiction of the HRET would inevitably allow its circumvention, defeating the very intent of the Constitution. The Court should not permit this palpable substitution for a lost remedy. To do so would be highly unfair, iniquitous, and immoral. More important, it leaves party-lists vulnerable to the whims and caprices, or worse, vindictive spirit of those challenging their existence. Surely, this is not the intent of the Constitution when it delineated the jurisdiction of the COMELEC and the HRET.

Indeed, the COMELEC is mandated by the Constitution to exercise the power of registering party-list organizations.¹³ Corollary to such power is the cancellation of the party-list's registration when warranted by law as when the party-list "violates or fails to comply with laws, rules or regulations relating

¹³ SECTION 2. The Commission on Elections shall exercise the following powers and functions:

.....

(5) Register, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government; and accredit citizens' arms of the Commission on Elections. Religious denominations and sects shall not be registered. Those which seek to achieve their goals through violence or unlawful means, or refuse to uphold and adhere to this Constitution, or which are supported by any foreign government shall likewise be refused registration.

.....



to elections.”¹⁴ In the event, however, that a challenge to the party-list’s registration is brought before the COMELEC *while* the party-list is currently serving as a member of the House of Representatives, I posit that the COMELEC must defer to the jurisdiction of the HRET; otherwise, it will intrude into the exclusive realm constitutionally reserved only for the latter.

The COMELEC has explicitly recognized AN WARAY’S assumption into office and its membership in the House of Representatives following the 2013 NLE

According to the *Majority*, AN WARAY’s violation of NBOC Resolution No. 13-030 (PL)/0004-14 warranted the cancellation of its party-list registration.¹⁵ This pronouncement, however, overlooked the following undisputed facts:

AN WARAY was proclaimed a winning party-list in the 2013 NLE on May 24, 2013 and initially allocated one guaranteed seat. Later on, **COMELEC informed AN WARAY** per NBOC Resolution No. 0008-13 that it was entitled to **two seats** in the House.¹⁶ AN WARAY relied on this representation of COMELEC. There was certainly no reason not to at the time.

So it assumed office through its first nominee; and later, through its second nominee, Victoria.¹⁷ AN WARAY then *requested* COMELEC to issue a certificate of proclamation in favor of Victoria. COMELEC merely **noted** the request.¹⁸ Meantime AN WARAY finished its term in 2016. COMELEC **never revoked** AN WARAY’s second seat. To date, the COMELEC has failed to explain its inaction on AN WARAY’s request for issuance of a certificate of proclamation in Victoria’s favor.

In other words, for an entire term of three years, AN WARAY occupied and served its second seat in the Larger House through Victoria without so much any contest, any inkling, *nay*, any shadow of doubt that the second seat AN WARAY was occupying did not rightfully belong to it.

More important, COMELEC even explicitly recognized AN WARAY’s assumption of a second seat through its agent Victoria in *Aangat Tayo Party-list, et al. v. COMELEC, et al.*¹⁹ In that case, petitioner therein assailed NBOC Resolution No. 0008-13, under which two seats were allocated to AN

¹⁴ Republic Act No. 7941, sec. 6.

¹⁵ *Ponencia*, p. 27.

¹⁶ *Rollo*, p. 90.

¹⁷ *Id.* at 10.

¹⁸ *Id.* at 91.

¹⁹ G.R. No. 210530, September 5, 2017 [Notice, *En Banc*].

WARAY, a party impleaded in the case as private respondent. Thus, in its Comment dated May 2, 2014, the COMELEC manifested, as follows:²⁰

Again, NBOC Resolution No. 0008-13 was issued without prejudice to the proclamation of other parties, organizations or coalitions which may later on be established to be entitled to one guaranteed seat and/or additional seat.

Pursuant to NBOC Resolution No. 0008-13, the respective representatives of private respondents took their oaths and began to discharge their duties as members of the 16th Congress. They are:

POLITICAL PARTY/COALITION/SECTORAL ORGANIZATIONS	REPRESENTATIVES
.....	
AN WARAY	
	MONTEJO, NEIL BENEDICT A.
	NOEL, VICTORIA G.

.....

The respective representatives of private respondents had already taken their oaths and are now assuming office as members of the House of Representatives. This being so, it is now the House of Representatives Electoral Tribunal (HRET) which has jurisdiction over the matter.

.....

Indeed, COMELEC itself recognized in no uncertain terms the assumption of Victoria and Montejo as nominees of AN WARAY, the allocation of two seats to AN WARAY, and the jurisdiction of HRET over the matter.

In any event, though the issues in *Aangat Tayo Party-list* and the present Petition are different, it is evident that COMELEC was aware of and posed no objection to the assumption of office by *several* party-list representatives based on NBOC Resolution No. 0008-13. **Subsequently, following its issuance of NBOC Resolution No. 13-030 (PL)/0004-14, there was no further action from COMELEC directing AN WARAY to vacate its second seat.**

But this is not all.

²⁰ Rollo, pp. 351-357. (Citations omitted).

In 2016, AN WARAY through its agent Victoria served another term in the House of Representatives.²¹ Again, COMELEC did not lift a finger against AN WARAY—not when it filed its Manifestation of Intent to Participate in the 2016 NLE and not when it assumed office in the House through its agent Victoria.²² COMELEC was mum. It was silent. And it was silent for a very long time until 2019—already six years after the fact. Those six years were enough for AN WARAY to have finished two whole terms in the House without any fuss regarding the second seat it took during the 2013 NLE.

Thus, the COMELEC should be estopped from still assailing the validity of AN WARAY's assumption of a second seat in 2013. To be sure, COMELEC:

(1) had the duty to notify AN WARAY that it was not entitled to two seats, especially when the latter requested the issuance of a certificate of proclamation in favor of its nominee Victoria;

(2) yet, inexplicably it refrained from doing so for six whole years;

(3) it even later on expressly recognized in *Aangat Tayo* that Victoria had taken her oath of office pursuant to NBOC Resolution No. 0008-13 and consequently asserted it no longer had jurisdiction over the matter; and

(4) naturally leading AN WARAY to believe that, indeed, it was entitled to two seats in the House in 2013, and that it rightfully sat as AN WARAY's second representative through its agent Victoria.

On this score, the Court had invariably ruled, “the government must not be allowed to deal dishonorably or capriciously with its citizens and must not play an ignoble part or do a shabby thing; and subject to limitations, the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.”²³ The perfect time to apply this exception is here and now.

***The inordinate delay of
COMELEC in resolving the
case against AN WARAY
warranted its dismissal***

I submit that there was inordinate delay in the resolution of AN WARAY's case, in violation of AN WARAY's right to a speedy disposition of the case against it. Respondents filed the petition for the cancellation of AN

²¹ *Id.* at 203.

²² *Id.* at 11.

²³ *Republic v. Sundiam*, 880 Phil. 254, 264 (2020) [Per J. Caguioa, First Division].

WARAY's party-list registration on May 10, 2019. AN WARAY timely filed its answer on June 3, 2019. A hearing was then conducted on June 11, 2019 after which, AN WARAY submitted its memorandum on July 18, 2019, while respondents filed their memorandum on July 30, 2019.²⁴ Yet the COMELEC only resolved the petition on June 2, 2023, or more than four years later. *Cagang v. Sandiganbayan*²⁵ held:

The burden of proving delay depends on whether delay is alleged within the periods provided by law or procedural rules. If the delay is alleged to have occurred during the given periods, the burden is on the respondent or the accused to prove that the delay was inordinate. **If the delay is alleged to have occurred beyond the given periods, the burden shifts to the prosecution to prove that the delay was reasonable under the circumstances and that no prejudice was suffered by the accused as a result of the delay.**

The determination of whether the delay was inordinate is not through mere mathematical reckoning but through the examination of the facts and circumstances surrounding the case. Courts should appraise a reasonable period from the point of view of how much time a competent and independent public officer would need in relation to the complexity of a given case. If there has been delay, the prosecution must be able to satisfactorily explain the reasons for such delay and that no prejudice was suffered by the accused as a result. The timely invocation of the accused's constitutional rights must also be examined on a case-to-case basis. (Emphasis supplied)

As well, the Court in *Javier v. Sandiganbayan*²⁶ speaking through the erudite *ponente*, ruled that "if the delay is beyond the time periods provided in the rule to decide the case, the burden of proof shifts to the State." At this point, it is no longer the respondent's duty to invoke his or her right to speedy disposition of cases, but the State's duty to ensure that such constitutionally-guaranteed right was served the respondent in the first place.

According to the *Majority*, while the right to speedy disposition of cases applies in administrative cases, *Cagang* focused only on administrative cases which are adversarial and may result in criminal prosecution.²⁷ Additionally, pursuant to *Abella v. Commission on Audit Proper*,²⁸ a claim for violation of one's right to speedy disposition of cases in an administrative matter that does not lead to a criminal indictment requires an actual, specific, and real injury to the claimant's right which, further, must have conclusive and factual basis.

Once again, I differ. The Court has utilized the standards of *Cagang* in other administrative cases to determine whether there has been inordinate

²⁴ *Rollo*, pp. 11-12.

²⁵ G.R. Nos. 206438, et al., 837 Phil. 815 (2019) [Per J. Leonen, *En Banc*].

²⁶ 873 Phil. 951 (2020) [Per J. Caguioa, First Division].

²⁷ *Ponencia*, p. 22

²⁸ G.R. No. 238940, April 19, 2022 [Per J. M. Lopez, *En Banc*].

delay as it did in *Abella*.²⁹ In *Rosario v. Commission on Audit*,³⁰ for example, the Court applied four factors, i.e., the length of delay, the reason for the delay, assertion of right, and prejudice to petitioner, in appraising whether inordinate delay has been committed by the Commission on Audit (COA) Proper. It ruled in the affirmative, finding the COA Proper's delay of 14 years in resolving the case despite petitioner's quick assertion of her right to the speedy disposition of the case unjustified, ultimately causing her great prejudice.

Too, in *Philippine Deposit Insurance Corporation v. COA*,³¹ the standards in *Cagang* were similarly applied to the proceedings before the COA Proper. In fact, the Court reminded:

Nevertheless, as we have held in *Cagang*, the COA is reminded to set reasonable periods for its auditing processes, with due regard to the complexities and nuances of each case. Delays beyond this period may then be taken against it. . . .

And rightly, *Cagang* similarly applies here. For the cancellation of registration as a party list is punitive in nature in view of the heavy penalty involved. In any event, I opine that there is an actual, specific, and real injury which cannot be ignored as it involves not only the capacity of AN WARAY to sit as a Member of the House of Representatives in service of its constituents and the nation, but also the obstruction of the will of the electorate that had continued to put its faith and trust in AN WARAY for several NLEs even after AN WARAY's supposed transgression.

Rule 18, Section 8 of the COMELEC Rules of Procedure provides that any case heard by a division shall be decided within 10 days from the day it is deemed submitted for decision or resolution. Indubitably, more than 10 days have lapsed from the filing of the last memorandum until the resolution of the case by the COMELEC Second Division. Having failed to resolve the petition within the 10-day period provided by the COMELEC Rules of Procedure, the burden lies with the COMELEC to prove that the delay was reasonable and that no prejudice was suffered by AN WARAY as a result of the delay. The COMELEC, however, failed to establish the reasonableness of the four-year delay. Thus, not only was there a patent violation of AN WARAY's right to speedy disposition of cases, there was also clear grave abuse of discretion on the part of COMELEC in ordering the cancellation of AN WARAY's party-list registration, albeit it was devoid of jurisdiction to even take cognizance thereof.

Even granting that the so-called defective proclamation precluded AN WARAY from assuming its second seat in the Larger House, this supposition did not remove the case from JRET's exclusive jurisdiction. Quite the

²⁹ *Rosario v. COA*, G.R. No. 253686, June 29, 2021 [Per J. Lazaro-Javier, *En Banc*]; *PDIC v. COA*, G.R. No. 218068, March 15, 2022 [Per J. M. Lopez, *En Banc*].

³⁰ G.R. No. 253686, June 29, 2021 [Per J. Lazaro-Javier, *En Banc*].

³¹ G.R. No. 218068, March 15, 2022 [Per J. M.V. Lopez, *En Banc*].

opposite, the Court held in *Linkaichong v Commission on Elections*³² that “any allegations as to the invalidity of the proclamation will not prevent the HRET from assuming jurisdiction over all matters essential to a member’s qualification to sit in the House of Representatives.”³³ Further, there is no issue regarding AN WARAY’s present membership in the Larger House through its agent Representative Noel. Despite the COMELEC’s entry of judgment that the assailed Resolution dated August 14, 2023 of the COMELEC *En Banc* has become final and executory, such Resolution is not actually final.³⁴

Article IX, Section 7 of the 1987 Constitution expressly provides the proper remedy to assail COMELEC decisions, i.e., “unless otherwise provided [...], any decision, order, or ruling of each Commission may be brought to the Supreme Court *on certiorari* by the aggrieved party *within thirty days from receipt of a copy thereof*.”

Despite this clear wording of the Constitution, Rule 18, Section 13 of the COMELEC Rules of Procedure ordains that in special proceedings like cancellation of the registration of a party-list organization,³⁵ the decision of the COMELEC *En Banc* attains finality after 30 days **from promulgation**:

Sec. 13. Finality of Decisions or Resolutions. – (a) **In ordinary actions, special proceedings, provisional remedies and special reliefs a decision or resolution of the Commission *en banc* shall become final and executory after thirty (30) days from its promulgation.**

(b) In Special Actions and Special Cases a decision or resolutions of the Commission *en banc* shall become final and executory after five (5) days from its promulgation unless restrained by the Supreme Court.

(c) Unless a motion for reconsideration is seasonably filed, a decision or resolution of a Division shall become final and executory after the lapse of five (5) days in Special actions and Special cases and after fifteen (15) days in all other actions or proceedings, following its promulgation. (Emphasis supplied)

Meanwhile, Rule 64, Sections 3 and 8 of the Rules of Court is worded in accordance with the Constitution, i.e., an aggrieved party may file a petition for *certiorari* with the Supreme Court within 30 days **from notice** of the assailed COMELEC disposition, but the same shall not stay the execution of the said assailed COMELEC decision or resolution:

³² 601 Phil. 751 (2009) [Per J. Peralta, *En Banc*].

³³ *Id.*

³⁴ *Rollo*, pp. 585, 704-705.

³⁵ See COMELEC Rules of Procedure, Rule 32.

RULE 64

**Review of Judgments and Final Orders and Resolutions of the
Commission on Elections and Commission on Audit**

Section 3. Time to file petition. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Section 8. Effect of filing. — The filing of petition for *certiorari* shall **not stay the execution of the judgment or final order or resolution sought to be reviewed**, unless the Supreme Court shall direct otherwise upon such terms as it may deem just. (Emphasis supplied)

In *Gana-Carait v. COMELEC*,³⁶ the Court *En Banc* took the opportunity to harmonize the COMELEC Rules of Procedure vis-à-vis the Constitution and the Rules of Court and ordained that if the aggrieved party timely files a Rule 64 petition within the 30-day reglementary period but the Court did not issue a TRO, the assailed COMELEC disposition shall become executory—**but not final, viz.:**

In line with the foregoing, and as aptly pointed out by Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), the proper way of harmonizing Section 8, Rule 23 of the COMELEC Rules with Article IX of the 1987 Constitution and Rule 64 of the Rules of Court is not understand it to mean that **decisions and resolutions of the COMELEC *En Banc*, in the absence of a restraining order from the Court issued within five days from receipt, are rendered only executory – but not final.** Hence, despite COMELEC's issuance of the Certificate of Finality and Entry of Judgment, We find that the COMELEC *En Banc* Resolution did not actually attain finality, and as such, may be the subject of the instant petition, and may be addressed by the Court. (Emphasis supplied)

Here, while the COMELEC *En Banc* Resolution indeed, has become executory, since the Court did not grant AN WARAY's prayer for injunctive relief or *status quo ante* order, the same **has not attained finality**, regardless of the COMELEC's issuance of a Certificate of Finality and Entry of Judgment. For AN WARAY timely assailed the COMELEC *En Banc* Resolution *via* a Rule 64 Petition. Specifically, its Petition was filed on August 22, 2024, well-within 30 days from its receipt of the COMELEC *En Banc*'s Resolution on August 14, 2024.³⁷

That AN WARAY through Representative Noel had been dropped from the Roll of the Members of the House of Representatives pursuant to the

³⁶ G.R. No. 257453, August 9, 2022 [Pea J. Restric, *En Banc*].

³⁷ *Rollo*, pp. 6–7.

execution of the COMELEC *En Banc*'s Resolution is of no moment; otherwise, the remedy provided by no less than the Constitution, as enforced under Rule 64 of the Rules of Court, would be rendered inutile. To take the contrary stance would lead to the absurd situation where the Court would always be rendered powerless to determine on the merits Rule 64 Petitions against the COMELEC simply because in the *interim*, supervening events had transpired relative to the execution of the COMELEC dispositions being assailed as void.

Another, and most important, a judgment rendered without jurisdiction or with grave abuse of discretion is a void judgment.³⁸ The same has no legal effect for any purpose and can never attain finality, as here.³⁹

*The cancellation of AN
WARAY's party-list
registration may not
retroactively take effect*

To be sure, AN WARAY through their nominee, Representative Noel, was invalidly removed from their seat in the House of Representatives pursuant to the assailed disposition of the COMELEC which, as discussed, was rendered sans jurisdiction and with grave abuse of discretion amounting to lack or excess of jurisdiction. To reiterate, the attendant peculiar circumstances here call for the exercise of the HRET's jurisdiction to review the qualifications of members of the House of Representatives such as AN WARAY.

Notably, at the time AN WARAY occupied its seat or seats in the House of Representatives through its nominee or nominees, it carried with it the highest imprimatur from which it derived its right to assume office—the *fiat* of the electorate, the sovereign, from whom all government authority emanates.⁴⁰ This will of the people ought not to be easily discarded, especially not in hindsight. For the same reason, the removal of AN WARAY from office arising from a supposed defect in its qualifications must be done strictly in accordance with the Constitution, which expressly confers such jurisdiction upon the HRET.

The people have spoken: they cast their votes during the 2013, 2016, and 2022 NLE in favor of AN WARAY to represent them in the Larger House. They did so with the knowledge and belief that this party-list organization to whom they entrust their confidence was fully capacitated to represent them and **will capably do so** in the House of Representatives. This sovereign will ought to be upheld. For at such point in time, the electorate had voted for a

³⁸ *Imperial v. Armes*, 304 Phil. 459 (2017) [Per J. Jardeleza, Third Division].

³⁹ See *PNB v. Daráar*, G.R. No. 189263, June 23, 2021 [Per J. Hernando, Third Division].

⁴⁰ 1987 CONST., art. II, sec. 1.

legitimate and qualified party-list. The **operative fact doctrine** applies to respect and uphold AN WARAY's incumbent membership in the Larger House.

Indeed, the doctrine of operative fact is an exception to the general rule that the nullification of an unconstitutional law or act carries with it the illegality of its effects. In cases, however, where nullification of the effects will result in inequity and injustice, *as here*, the operative fact doctrine may apply.⁴¹ Where there are extraordinary circumstances, the application of the doctrine of operative fact seeks to protect those who have relied on such fact from the undue burden arising from a declaration of its unconstitutionality.⁴² The Court has held that in applying the doctrine, "courts ought to examine with particularity the effects of the already accomplished acts . . . and determine, on the basis of equity and fair play, if such effects should be allowed to stand."⁴³ Albeit the doctrine properly applies to instances where the Court invalidated a legislative or executive measure,⁴⁴ there is no reason not to extend its application to the effects of the COMELEC's belated cancellation of a party-list's registration considering that the underlying purpose is one and the same, i.e., to avoid any resulting inequity and injustice arising from such cancellation.

This is especially true considering that the ground or grounds for cancellation here are not against any penal laws, public policy, public order, good morals, or good customs; but a mere result of confusion on some procedural rule which even the COMELEC itself did not seem to fully understand. Most of all, both the COMELEC and respondents have not refuted the position that cancellation of the registration of AN WARAY is too harsh a penalty to be imposed on a first-time offender who over the past two decades has consistently maintained its good standing as a repository of the people's trust and confidence.

As the final arbiter of truth and justice, the Court only ever seeks to steadfastly uphold the Constitution in its pursuit of justice. No expansion of the power of the COMELEC must be decreed which intrudes into the jurisdiction that is constitutionally reserved to the HRET.

All told, I submit that the assailed resolutions of the COMELEC are void for having been issued without jurisdiction. Even then, I contend that the Court should not decree the dismissal of the petition for cancellation of AN WARAY's registration as a party-list organization. Due consideration must be accorded to the people who cast their votes in favor of AN WARAY, a two-decade old party list organization which has consistently won seats in the

⁴¹ *Araullo v. Aquino*, G.R. No. 299287, February 3, 2015 [Per J. Bersamin, *En Banc*].

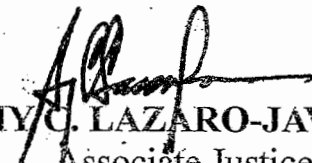
⁴² *Film Development Council of the Philippines v. Cebu Heritage Realty Corp.*, G.R. No. 203754, October 15, 2019 [Per J. Perlas-Bernabe, *En Banc*].

⁴³ *Id.*

⁴⁴ *Agbayani v. Philippine National Bank*, G.R. No. L-23127, April 29, 1971 [Per J. Fernando, *En Banc*].

House of Representatives for the past several national elections. More important, the democratic process of representation compels a prompt, nay, definitive ruling, once and for all, if indeed AN WARAY has lost its qualifications to keep its membership in the House of Representatives. In the higher interest of justice and equity, therefore, I maintain that the Court should refer COMELEC SPP NO. 19-008 to the HRET for appropriate disposition.

Thus, I vote to **PARTLY GRANT** the Petition. The assailed Resolution dated June 2, 2023 and Resolution dated August 14, 2023 in COMELEC SPP NO. 19-008 must be **SET ASIDE**. The Commission on Elections ought to be **DIRECTED** to **TRANSMIT** the complete records of COMELEC SPP NO. 19-008 to the House of Representatives Electoral Tribunal within 10 days from notice.


AMY C. LAZARO-JAVIER
Associate Justice