

**HERMOGENES P. POBRE, PETITIONER, VS. MARIANO E. MENDIETA  
AND HON. CORONA IBAY-SOMERA IN HER CAPACITY AS PRESIDING  
JUDGE OF BRANCH 26, REGIONAL TRIAL COURT OF MANILA,  
RESPONDENTS.**

*G.R. No. 106677. July 23, 1993*

Ponente: GRIÑO-AQUINO, J.

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**GRIÑO-AQUINO, J.:**

These consolidated petitions under Rules 45 and 65 of the Rules of Court were filed by Hermogenes Pobre to set aside the decision dated August 5, 1992 and writ of prohibitory injunction dated August 19, 1992 issued by Judge (now Court of Appeals Justice) Corona Ibay-Somera, in Civil Case No. 92-60272 entitled, "Mariano A. Mendie-ta, petitioner vs. Hermogenes P. Pobre, respondent," annulling the appointment extended by President Corazon C. Aquino to the petitioner, Hermogenes Pobre, as Com-missioner/Chairman of the Professional Regulation Com-mission (hereafter PRC for brevity) and enjoining him from discharging the duties and functions of that office.

The controversy began on January 2, 1992, when the term of office of Honorable Julio B. Francia as PRC Commissioner/Chairman expired. At that time, Mariano A. Mendieta was the senior Associate Commissioner and Hermogenes P. Pobre was the second Associate Commission-er of the PRC.

On January 6, 1992, Executive Secretary Franklin M. Drilon sought the opinion of Acting Secretary of Justice Silvestre H. Bello, III on whether the Presi-dent's power to appoint the Commissioner of the Profes-sional Regulation Commission is restricted by Section 2 of P.D. No. 223, as amended, which provides:

"Sec. 2. Composition. - The Commission shall be headed by one fulltime Commissioner and two full-time Associate Commissioners, all to be appointed by the President for a term of nine (9) years without reappointment to start from the time they assume office, except the first two Associate Commissioners who shall be appointed, one for six (6) years and the other for three (3) years, and thereafter, any vacancy in the Commission shall be filled for the unexpired term only with the most senior of the Associate Commis-sioners succeeding the Commissioner at the expiration of his term, resignation or removal. No person shall be appointed chairman or member of the Commission unless he is at least forty (40) years of age, familiar with the principles and methods of professional regulation and/or licensing and has at least five (5) years of executive or managerial experience.

The Executive Secretary wanted to know whether the President may appoint as Commissioner/Chairman of the PRC another Associate Commissioner or any person other than the Senior Associate Commissioner.

In a Memorandum dated January 22, 1991, Acting Secretary of Justice Silvestre H. Bello, III answered the queries as follows:

"Based on the foregoing prem-ises, it is our view that Section 2 of P.D. No. 223 does not limit or restrict the appointing power of the President. A contrary interpreta-tion would taint the provision with unconstitutionality

since it would countenance a usurpation by the legislature of a power which does not belong to it but pertains to the executive. It has been said that 'those matters which the Constitution specifically confides to the executive, the legislative cannot directly or indirectly take from his control' (Gov't. of P.I. vs. Springer, 50 Phil. 259, citing Cooley's Constitutional Limitations, 7th Ed., pp. 126-131; 157-162)." (p. 50, Rollo of 106696.)

On February 15, 1992, President Corazon C. Aquino appointed the petitioner, then an Associate Commissioner, as the PRC Commissioner/Chairman. He took his oath of office on February 17, 1992.

Even before Commissioner Pobre's appointment, the private respondent, Mariano A. Mendieta, as the Senior Associate Commissioner, filed a petition for declaratory relief against Commissioner Pobre, Executive Secretary Drilon, and Acting Secretary of Justice Eduardo Montenegro, praying that they be enjoined from appointing, or recommending, the appointment of Associate Commissioner Pobre as Chairman of the PRC because under Section 2 of P.D. No. 223, he (Mendieta), as the senior Associate Commissioner, was legally entitled to succeed Francia as Chairman of the PRC. His prayer for a restraining order was set for hearing on February 19, 1992 at 2:30 o'clock in the afternoon.

Pobre opposed the issuance of a restraining order because President Aquino had already appointed him PRC Chairman and he had, in fact, already taken his oath of office on February 17, 1992. Judge Somera denied the prayer for a restraining order as well as the petition for declaratory relief for being moot and academic.

Consequently, Mendieta filed a petition for quo warranto contesting Pobre's appointment as chairman of the PRC because he (Mendieta) allegedly succeeded Francia as PRC Chairman by operation of law.

In his answer to the petition for quo warranto, Pobre disputed Mendieta's claim on the ground that only the President of the Philippines, in whom the appointing power is vested by law and the Constitution, may name the successor of retired PRC Commissioner/Chairman Francia upon the expiration of the latter's term of office.

At the pre-trial of the case, the parties agreed to file simultaneous memoranda and to submit the case for decision on their pleadings.

On August 5, 1992, Judge Somera rendered a decision in favor of Mendieta which she rationalized as follows:

"The clear intent of Sec. 2 of P.D. 223 is to systematically provide a law allowing succession to the Office of the Commissioner. More so, the Court could not take credence on the claim of respondent to the effect that the most senior Associate Commissioner may only succeed to the Office of the Commissioner of the PRC only for unexpired portion. The unexpired portion emphasized under P.D. 223 merely pertains to that of the Associate Commissioner's term and has precisely nothing to do with the term of office of the Commissioner. Hence, if the law does not distinguish neither the Court should distinguish nor may any other person be allowed to do so.

"The purpose of the law in providing that any vacancy in the Professional Regulation Commission, not just the Office of the Commissioner, shall be filled 'for the unexpired term only' is to ensure that the staggering of terms will occur every three (3) years as intended to prevent the President from making more than one or two appointments during his term (Visarra vs. Mirafior, 8 SCRA 1). A similar purpose can be found in Presidential Decree No. 223.

"The Court finds it necessary to reiterate its findings regarding the reason and spirit of the law in enacting P.D. 223. A careful perusal of Sec. 2 of said decree would reveal that the then President Ferdinand E. Marcos issued this Decree with intent to give no room for unreasonable vacancies in the Commission. This is clearly emphasized by mere cursory reading of Sec. 22, P.D. 223. The Presidential Decree, however, had by mere implication, intended that vacancies in the position of Associate Commissioners may only be filled up by

means of a Presidential appointment." (pp. 39-40, Rollo of G.R. No. 106677; Underscoring ours.)

On August 19, 1992, she issued a writ of prohibitory injunction directing the Deputy Sheriff of Manila to stop Pobre from discharging the functions and duties of the Chairman/Commissioner of the PRC, and from enjoying the rights and privileges of that office.

In due time, Pobre came to this Court for relief by a petition for certiorari with a prayer for the issuance of a temporary restraining order which the Court issued on September 5, 1992, ordering respondent Judge to cease and desist from enforcing and/or implementing the decision dated August 5, 1992 and the writ of prohibitory injunction dated August 19, 1992; and respondent Mariano A. Mendieta to cease and desist from exercising the powers and duties of the Office of the PRC Chairman/Commissioner (G.R. No. 106696).

The petition raises an issue regarding the proper construction of the provision in Section 2 of P.D. No. 223 that: "x x x any vacancy in the Commission shall be filled for the unexpired term only with the most Senior of the Associate Commissioners succeeding the Commissioner at the expiration of his term, resignation or removal," whereby the legality of Pobre's appointment as PRC Chairman may be determined.

In interpreting this section of P.D. No. 223, consideration should be accorded the provision of the Constitution vesting the power of appointment in the President of the Philippines.

Section 10, Article VII of the 1973 Constitution which took effect on January 17, 1973 (per Proclamation No. 1102) was the source of former President Ferdinand E. Marcos' authority to issue P.D. No. 223 on June 22, 1973, because under that constitutional provision, the President was empowered to "appoint the heads of bureaus and offices." The chairman of the PRC is the head of an office.

"Sec. 10. The President shall appoint the heads of bureaus and offices, the officers of the armed forces of the Philippines from the rank of brigadier general or commodore, and all other officers of the Government whose appointments are not otherwise provided for, and those whom he may be authorized by law to appoint. However, the Batasang Pambansa may by law vest in the Prime Minister, members of the Cabinet, the Executive Committee, courts, heads of agencies, commissions, and boards the power to appoint inferior officers."

Section 10, Article VII of the 1973 Constitution was modified by Section 16, Article VII of the 1987 Constitution, which provides:

"Sec. 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards."

This provision empowers the President to appoint "those whom he may be authorized by law to appoint." The law that authorizes him to appoint the PRC Commissioner and Associate Commissioners, is P.D. 223, Section 2, which provides that the Commissioner and Associate Commissioners of the PRC are "all to be appointed by the President for a term of nine (9) years, without reappointment, to start from the time they assume office x x x."

In holding that Mendieta, as the senior PRC associate commissioner, has a valid claim to the office of chairman/commissioner vacated by Francia, Judge Somera relied on what she called the "succession clause" (p. 38, Rollo) in Section 2, P.D. No. 223 which provides that:

"x x x any vacancy in the Commission shall be filled for the unexpired term only with the most Senior of the Associate Commission-ers succeeding the Commissioner at the expiration of his term, resignation or removal." (Sec. 2, P.D. 223.)

She rejected Pobre's theory that said provision refers to a vacancy in the office of Commissioner/Chairman caused by the latter's retirement, resignation or removal (also death or incapacity) before the expiration of his 9-year term, thereby leaving "an unexpired term" which shall be served by "the most senior among the Associate Commissioners."

We do not agree with Judge Somera's opinion that the filling up of the vacancy "for the unexpired portion of the term only" refers to the unexpired portion of the term of the successor (the "most senior Associate Commissioner") rather than the unexpired portion of the Chairman's term. The Court holds that the succession clause operates only when there is an "unexpired term" of the Chairman/Commissioner to be served. Otherwise, if the Chairman's term had expired or been fully served, the vacancy must be filled by appointment of a new chairman by the President.

It may be candidly admitted that the language of Section 2, P.D. 223 leaves much to be desired for clarity. For instance, the provision speaks of "any vacancy in the Commission" but it obviously refers only to a vacancy in the position of Commissioner or Chairman for it is only he (or she) who may be succeeded by the "most senior Associate Commissioner." Furthermore, the same section speaks of "the most senior of the Associate Commissioners succeeding the Commissioner." Only the Chairman of the Commission bears the title of "Commissioner;" the others are "Associate Commissioners."

The Court finds unacceptable the view that every vacancy in the Commission (except the position of "junior" Associate Commissioner) shall be filled by "succession" or by "operation of law" for that would deprive the President of his power to appoint a new PRC Commissioner and Associate Commissioners - "all to be appointed by the President" under P.D. No. 223. The absurd result would be that the only occasion for the President to exercise his appointing power would be when the position of junior (or second) Associate Commissioner becomes vacant. We may not presume that when the President issued P.D. No. 223, he deliberately clipped his prerogative to choose and appoint the head of the PRC and limited himself to the selection and appointment of only the associate commissioner occupying the lowest rung of the ladder in that agency. Since such an absurdity may not be presumed, the Court should so construe the law as to avoid it.

"The duty devolves on the court to ascertain the true meaning where the language of a statute is of doubtful meaning, or where an adherence to the strict letter would lead to injustice, absurdity, or contradictory provisions, since an ambiguity calling for construction may arise when the consequence of a literal interpretation of the language is an unjust, absurd, unreasonable, or mischievous result, or one at variance with the policy of the legislation as a whole; and the real meaning of the statute is to be ascertained and declared, even though it seems to conflict with the words of the statute." (82 CJS 589--590; Emphasis supplied.)

As a matter of fact, the history of the PRC disproves Judge Somera's "succession-by-operation-of-law" theory, for when the first PRC chairman, Eric Nubla, stepped down on June 16, 1986 (after more than 12 years in office[1]) he was not automatically succeeded by the senior Associate Commissioner Numeriano Tanopo (who served as such up to March 23, 1987) but by Julio Francia, Jr., an outsider, whom the President appointed as the new PRC chairman.

When Luis Tomacruz's term as senior Associate Commissioner expired on January 1, 1989, he was not automatically succeeded by the Associate Commissioner Domiciano Natividad. Instead, the President appointed Mariano Mendieta as senior Associate Commissioner on March 9, 1990. On February 13, 1991, Hermogenes

Pobre was appointed junior Associate Commissioner vice Domi-ciano Natividad.

Apparently, during the past 19 years that the PRC has existed (since January 2, 1974), it has not been the practice to fill the unexpired term of a departing PRC Commissioner or Associate Commissioner by "automatic succession." Instead, the incumbent was allowed to "hold over" beyond his 9-year term until someone (not necessarily the next-in-rank) was appointed by the President to succeed him.

What then is the meaning of the underlined portion of the provision that:

"x x x any vacancy in the Commission shall be filled for the unexpired term only with the most Senior of the Associate Commission-ers succeeding the Commissioner at the expiration of his term, resigna-tion or removal." (Sec. 2, P.D. 223; emphasis supplied.)

In view of our ruling that said provision of P.D. 223 applies only to the unexpired term of the Chairman/Commissioner, the underlined clause: "at the expiration of his term, resignation or removal" can not possibly refer to the Chairman/Commissioner for it would contradict the first clause providing that he will be succeeded by the senior Associate Commissioner "for the unexpired portion of his term only." There can be no more "unexpired term" to speak of if the Chairman stepped down "at the expiration of his term." It is more logical to assume that the underlined clause refers to the senior Associate Commissioner who should serve only up to "the expiration of his term, resignation or removal." Hence, the preposition "at," which appears to have been used inadvertently, should be understood to mean "until" so that the provision will read thus:

"x x x any vacancy in the Commission shall be filled for the unexpired term only with the most Senior of the Associate Commissioners succeeding the Commissioner until the expiration of his term, resignation or removal." (Sec. 2, P.D. 223.)

The substitution of a word in the statute is allowed to avoid an absurdity or contradiction.

"The rule of construction according to the spirit of the law is especially applicable where adherence to the letter would result in absurdity or injustice or where adherence to the letter of the law would lead to contradictions or defeat the plain purpose of the act, or where the provision was inserted through inadvertence. In following this rule, words may be modified or rejected and others substituted, or words and phrases may be transposed. So the meaning of general language may be restrained by the spirit or reason of the statute, and may be construed to admit implied exceptions. Apparent inaccuracies and mistakes in the mere verbiage or phraseology will be overlooked to give effect to the spirit of the law." (82 CJS 618-621.)

The substitution of "until" for "at" in this case is justified for the following reasons:

- (1) the term of the commissioner and associate commissioners is fixed at nine (9) years without reappointment. Hence, the senior Associate Commissioner who serves the unexpired term of the chairman, may not exceed his own 9-year term.
- (2) to preserve the staggering of the 9-year term of the Commis-sioner and Associate Commissioners so that the president need not appoint a Commissioner or Associate Commissioner except once every three (3) years.
- (3) to fix the "expiration of the term" of the Commissioner and Associate Commissioners on a definite date which is January 2nd every three (3) years, beginning January 2, 1974 when the PRC was first organized.

Since the appointment of the petitioner as PRC Chairman/Commissioner to succeed Julio B. Francia, Jr. at the expiration of his term did not violate any provi-sion of P.D. No. 223 and in fact conforms with the Chief Executive's interpretation and implementation of the law, the legality of said appointment should be upheld.

WHEREFORE, the petition for certiorari is GRANTED. The questioned decision dated August 5, 1992 and the writ of prohibitory injunction dated August 19, 1992 issued by respondent Judge in Civil Case No. 92-60272 are hereby ANNULLED and SET ASIDE. The appointment of petitioner Hermogenes P. Pobre as Commissioner/Chairman of the Professional Regulation Commission is declared lawful and in order. No costs.

**SO ORDERED.**

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Puno and Vitug, JJ., no part.

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[1] Nine (9) years as his regular term and three (3) 3 years in a hold-over capacity.

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