

## EN BANC

[ G.R. No. 183171, August 14, 2008 ]

### FRANCISCO S. TATAD, PETITIONER, VS. COMMISSION ON APPOINTMENTS, RESPONDENT.

#### R E S O L U T I O N

**REYES, R.T., J.:**

THE appointment to ambassadorial positions of qualified persons over 70 years of age is at focus in this petition for review on *certiorari* of the Decision<sup>[1]</sup> of the Court of Appeals (CA) dismissing former Senator Francisco Tatad's appeal from the Order<sup>[2]</sup> of the Regional Trial Court (RTC) in Quezon City.

On May 4, 2005, respondent Commission on Appointments (Commission) issued a Certification of Consent<sup>[3]</sup> and confirmed the appointment of former Vice President Teofisto Guingona, Jr. as Ambassador Extraordinary and Plenipotentiary to the People's Republic of China with concurrent jurisdiction over the Democratic People's Republic of Korea and Mongolia. Petitioner Tatad challenged the consent before the RTC in Quezon City via a Complaint for Declaration of Nullity. The case, docketed as Civil Case No. Q-05-55417, was raffled off to Branch 219 of said court, presided by Judge Bayani V. Vargas.

Petitioner prayed that the Commission's consent be declared as void from the beginning on the ground that the appointment of former Vice President Guingona to the position was contrary to law and public policy because he was already beyond seventy (70) years old at that time.

After respondent Commission filed its Answer,<sup>[4]</sup> petitioner filed a Motion for Judgment on the Pleadings.<sup>[5]</sup> Respondent opposed the motion and contended that the complaint should be dismissed considering that the issue had been mooted after Ambassador Guingona tendered his resignation from the position.<sup>[6]</sup>

On August 30, 2006, the RTC issued its Order<sup>[7]</sup> dismissing the complaint. The *fallo* of the RTC order runs in this wise:

WHEREFORE, premises considered, the Motion for Judgment on the Pleadings is hereby denied and the Motion to Dismiss the instant case is Granted.<sup>[8]</sup>

Disagreeing, petitioner elevated the matter before the CA. In his appeal, petitioner argued, *inter alia*, that Republic Act (R.A.) No. 7157, otherwise known as the Philippine Foreign Service Act of 1991,<sup>[9]</sup> prohibits appointments of those beyond seventy (70) years old to ambassadorial posts; that Ambassador Guingona's resignation did not render the case moot because there must be a continuing