



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 3/2541*

Dated 14th July B.E. 2541 (1998)

Re : The Election Commission requested for a ruling on the scope of powers and duties of the Election Commission.

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The Election Commission submitted an application, dated 2nd July B.E. 2541 (1998), to the Constitutional Court on 8th June B.E. 2541 (1998) that Prachakorn Thai Party notified the Political Party Registrar of changes made under resolution of general meeting No. 1/2541 on 1st June B.E. 2541 (1998) to executive committee of Prachakorn Thai Party within thirty days of such a resolution, i.e. within 8th July B.E. 2541 (1998), pursuant to section 33 of the Organic Act on Political Parties B.E. 2541 (1998). On 10th June B.E. 2541 (1998), Mr. Wattana Asawahem and others, a total of 12 persons, submitted a letter to the Political Party Registrar requesting for a withholding of the registration of such changes to the executive committee of Prachakorn Thai Party notified above. Such a registration would have resulted in Mr. Wattana Asawahem and others vacating office as members of the executive committee of Prachakorn Thai Party. Thereafter, the Civil Court issued a Provisional Injunction, dated 26th June B.E. 2541 (1998), preventing the Chairman of the Election Commission, as Political Party Registrar, from registering the change in membership of Prachakorn Thai Party's executive committee of Mr. Wattana Asawahem until the Court ordered otherwise. The Election Commission held that the Provisional Injunction incapacitated the quorum of the Election Commission, which was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), from performing duties under the Constitution, and of the Chairman of the Election Commission, in his capacity as the Political Party Registrar, from performing duties under the Organic Act on Political Parties, B.E. 2541 (1998). The Election Commission therefore resolved that the Chairman of the Election Commission refer the matter to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to resolve the competent powers and duties of the Election Commission and the Civil Court.

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The Civil Court submitted an opinion to the Constitutional Court that during the filing of Case No. PK. 61/2541, between Mr. Wattana Asawahem and others, as plaintiffs, and Mr. Thirasak Kannasut, President of the Election Commission, in the capacity of Political Party Registrar, as defendant, the Organic Act on Political parties, B.E. 2541 (1998) had not yet been in force. Therefore, the applicable law was the Political Parties Act, B.E. 2524 (1981), which only provided for the case of non-registration of changes in the political party's executive committee where the political party leader had the right to submit an application to the Civil Court to refer the matter to the Supreme Court for ruling. However, in this case of registration of changes to the political party executive committee, the law did not specifically provide for the plaintiffs to submit an application or file claims at any Court. Moreover, no provision in any section entitled the Political Party Registrar and the Election Commission to exercise judicial powers as the Courts, therefore, no provisions of the law made the ruling of the Political Party Registrar or Election Commission final and conclusive. Section 24 of the Political Party Act, B.E. 2524 (1981) provided for the subject of the objection of rights to submit an application to the Civil Court for making a reference to the Supreme Court, which showed that the ruling of the Political Party Registrar was not final and conclusive. The Civil Court was a Court of Justice with the powers and duties to adjudicate on all cases under section 271 in conjunction with section 233 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the dispute between the Political Party Registrar and the plaintiffs was an administrative case, at the time of which the Administrative Courts had not yet been established, the judge in the case therefore accepted the case for consideration. When the application was accepted for consideration, there did not appear to be any party or any person who objected to the Civil Court. When the Organic Act on Political Parties, B.E. 2541 (1998) came into force, section 33 in conjunction with section 17 of such an Organic Act only provided that if the Political Party Registrar declined the registration of a change in the executive committee of a political party, the political party leader should submit an application to the Constitutional Court for consideration. However, this case was a case where the Political Party Registrar was in the process of registering the change in the executive committee of a political party, which was a different case from non-registration. The law did not provide that the political party executive committee member was a victim who should submit an application or file a case at any Court. Under the Organic Act on Political Parties, B.E. 2541 (1998), no provision in any section provided that the ruling of the Political Party Registrar and the Election Commission was final. If it was ruled that the plaintiff did have the right to file the case, that the Court did not have the power to accept the application and that the Court could not issue the Order, such a ruling could be deemed as a restriction of the plaintiff's rights under section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Committee of judges in the Civil Court presiding over this case therefore jointly issued an interim order to temporarily protect the rights of the plaintiff before judgment.

The Constitutional Court held the following opinion. The Election Commission was an organ under the Constitution with the powers and duties in section 145 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). One such duty in section 145(3) was

“to conduct investigations and inquiries for fact-finding and decision on arising problems or disputes under the laws referred to in section 144 paragraph two.” Section 144 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “the Chairman of the Election Commission shall have the charge and control of the execution of the organic law on the election of members of the House of Representatives, senators, the organic law on political parties, the organic law on voting in a referendum and the law on the election of members of local assemblies or local administrators and shall be the political-party registrar.”

The issue which had to be ruled on was therefore whether or not the Civil Court’s Order prohibiting Mr. Thirasak Kannasut, Chairman of the Election Commission, in the capacity of Political Party Registrar, from registering the change in the membership of Mr. Wattana Asawahem and others, a total of 12 persons, of the Prachakorn Thai Party’s executive committee pursuant to Civil Court Provisional Order, dated 26th June B.E. 2541 (1998), was binding on the performance of duties of Mr. Thirasak Kannasut, Chairman of the Election Commission as Political Party Registrar. The facts could be stated as follows. Prachakorn Thai Party notified the Political Party Registrar of changes in 11 members of its executive committee under a Resolution of Extraordinary General Meeting No. 1/2540 on 29th December B.E. 2540 (1997). Mr. Wattana Asawahem and others requested the Political Party Registrar to suspend the registration but the Political Party Registrar accepted the registration of changes in the Prachakorn Thai Party’s executive committee as requested by Prachakorn Thai Party. Mr. Wattana Assawahem and others, as plaintiffs, therefore filed claims at the Civil Court against Mr. Thirasak Kanasut, Chairman of the Election Commission in his capacity as the Political Party Registrar, as defendant, and Mr. Samak Sunthorawet, leader of Prachakorn Thai Party, as joint defendant, in Civil Case No. PK. 61/2541. The claim was filed on 18th March B.E. 2541 (1998). While the case was pending trial, on 8th June B.E. 2541 (1998), Prachakorn Thai Party notified changes in the executive committee, with 17 persons vacating office, of which there were 4 resignations, and 18 additional appointments. On 10th June B.E. 2541, Mr. Wattana Assawahem and others submitted a letter requesting the Political Party Registrar to withhold the registration of changes in the executive committee of Prachakorn Thai Party and requested the Civil Court to prevent the defendant in Case No. PK. 61/2541 from registering the change in the executive committee of Prachakorn Thai Party pursuant to Resolution of the General Meeting No. 1/2541, on 1st June B.E. 2541 (1998). The Civil Court issued a Provisional Order, dated 26th June B.E. 2541 (1998) preventing Mr. Thirasak Kannasut, Chairman of the Election Commission in his capacity as Political Party Registrar, from registering the change in the membership of the executive committee of Prachakorn Thai Party of the 12 plaintiffs until the Court issued an Order stating otherwise. As a result, the Election Commission was entitled to submit the matter to the Constitutional Court for consideration.

The Constitutional Court held that when Mr. Wattana Assawahem and others filed the claims at the Civil Court in Case No. PK. 61/2541 on 18th March B.E. 2541 (1998), the Political Parties Act, B.E. 2524 (1981) was still in force. Section 28 of such Act applied

section 23 and section 24 mutatis mutandis to the acceptance or non-acceptance of registration of changes by the Political Party Registrar. Section 23 applied to the case where the Political Party Registrar accepted registration while section 24 applied to the case where the Political Party Registrar declined registration for which the political party leader had the right to submit an application to the Supreme Court for a ruling. However, in the case where the Political Party Registrar accepted registration, there were no provisions which specifically provided for the objector to file claims at any Court. A claim was therefore filed at the Civil Court under section 271 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) because no provision of law stated that the case was within the jurisdiction of another Court. When the Organic Act on Political Parties, B.E. 2541 (1998) came into force as from 10th June B.E. 2541 (1998), section 3 of such Organic Act repealed the Political Parties Act, B.E. 2524 (1981). Therefore, as from 10th June B.E. 2541 (1998), if a problem or dispute arose under the Organic Act on Political Parties, B.E. 2541 (1998), it was within the powers of the Election Commission to conduct a fact-finding investigation and inquiry and adjudication under section 145(3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

In this case when Prachakorn Thai Party applied for the registration of changes in the executive committee of the Political Party to the Political Party Registrar and there were certain members of the party's executive committee who objected to such a registration, such a matter was a problem or dispute arisen within the powers of the Election Commission to adjudicate. The Civil Court's Order which prevented Mr. Thirasak Kannasut, Chairman of the Election Commission in his capacity as Political Party Registrar, from registering the change in membership of the executive committee of Prachakorn Thai Party of Mr. Wattana Asawahem and others, a total of 12 persons, after the Organic Act on Political Parties, B.E. 2541 (1998) came into force, was an Order inconsistent with section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

By virtue of the reasons stated above, the Constitutional Court held that the Order of the Civil Court preventing Mr. Thirasak Kannasut, Chairman of the Election Commission in his capacity as Political Party Registrar, from registering a change in the membership of the executive committee of Prachakorn Thai Party of Mr. Wattana Assawahem and others, a total of 12 persons, pursuant to the Provisional Injunction of the Civil Court, dated 26th June B.E. 2541 (1998), was not binding on Mr. Thirasak Kannasut, Chairman of the Election Commission in his capacity as Political Party Registrar.
