



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 7/2541*

Dated 13th August B.E. 2541 (1998)

Re : Municipality of Tambon Tha Kam, Amphoe Phunphin, Surat Thani Province, requested the Constitutional Court to make a ruling on whether or not the Order of the Minister of Interior terminating the membership of members of the Municipal Assembly as a result of the dissolution of the Municipal Assembly and the appointment of a provisional Municipal Council by the Provincial Governor were constitutional.

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The Municipality of Tambon Tha Kam, Amphoe Phunphin, Surat Thani Province, submitted an application, dated 30th June B.E. 2541 (1998), to the Constitutional Court in request of a ruling on whether or not the Order terminating the membership of members of the Municipal Assembly because of the dissolution of the Municipal Assembly, the Order of the Minister of Interior under section 74 and section 45 (4) of the Municipal Act, B.E. 2496 (1953) terminating the office of the entire Municipal Council and the appointment of a provisional Municipal Council by the Provincial Governor under section 45 paragraph two of the Municipal Act, B.E. 2496 (1953) were acts duly made under the law and under section 282 and section 283 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Municipality of Tambon Tha Kam claimed that the Ministry of Interior issued an Order which terminated the membership of members of the Municipal Assembly as a result of dissolution of the Municipal Assembly. The Ministry of Interior reasoned that the Council of State had notified the Council of Ministers and Minister of Interior that the office of members of the Municipal Assembly elected prior to the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) had to be in accordance with section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e.

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each term of office shall be four years. The five-year term of members of the Municipal Assembly under section 16 of the Municipal Act, B.E. 2496 (1953) was no longer enforceable because it was a provision contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Hence, reliance was made of the powers under section 74 and section 45 (4) of the Municipal Act, B.E. 2496 (1953) to order the termination of the membership of members of the Municipal Assembly as a result of the dissolution of the Municipal Assembly, such as in the Municipality of Mukdahan and the Municipality of Tambon Ban Phru. The Municipality of Tambon Tha Kam agreed with the opinion of the Council of State that members of the Municipality of Mukdahan and the Municipality of Ban Phru held office for a term of four years under section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, it was submitted that when the membership of the Municipal Assembly terminated at the expiration of term, the outgoing Municipal Council would remain in office to carry out the duties until the new Municipal Council took office under section 45 (1) of the Municipal Act, B.E. 2496 (1953). In such a case, the Provincial Governor needed not appoint a provisional Municipal Council under section 45 paragraph two of the Municipal Act, B.E. 2496 (1953). The exercise of powers by the Minister of Interior under section 74 in conjunction with section 45 (4) of the Municipal Act, B.E. 2496 (1953) to order the termination of membership of the Municipal Assembly as a result of the dissolution of the Municipal Assembly and to order the termination of office of the entire Municipal Council and the Provincial Governor's appointment of a provisional Municipal Council to carry out the operations of the Municipality until the appointment of a new Municipal Council, were probably inconsistent with section 282 and section 283 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 282 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that "subject to section 1, the State shall give autonomy to the locality in accordance with the principle of self-government according to the will of the people in the locality," and section 283 paragraph two stated that "the supervision of a local government organisation must be exercised in so far as it is necessary as provided by law but must be for protecting local interests or the interests of the country as a whole; provided, however, that it shall not substantially affect the principle of self-government according to the will of the people in the locality otherwise than as provided by law." Therefore, it could be seen that the Order of the Minister of Interior and the Order of the Provincial Governor were acts inconsistent with the principle of locality and exceeded the extent of necessity provided by law.

After an analysis, the Constitutional Court held that the problem which the Municipality of Tambon Tha Kam requested the Constitutional Court to adjudicate was whether or not the Order of the Minister of Interior, the Minister having charge and control of the execution under section 77 of the Municipal Act, B.E. 2496 (1953), issued by virtue of section 74 and section 45 (4) of the Municipal Act, B.E. 2496 (1953), terminating the memberships of the Municipal Assembly by reason of the dissolution of the Municipal Assembly under section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the appointment by the Provincial Governor, by virtue of the powers under section 45 paragraph two of the Municipal Act, B.E. 2496 (1953), as amended by

section 3 of the Municipal Act (No. 8), B.E. 2519 (1976), of a provisional Municipal Council to carry out the operations of the Municipality until the appointment of a new Municipal Council were acts which were unlawful or inconsistent with section 282 and section 283 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In this regard, section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “in the case where a dispute arises as to the powers and duties of organs under the Constitution, such organs or the President of the National Assembly shall submit a matter together with the opinion to the Constitutional Court for decision.” The problem referred to by the Municipality of Tambon Tha Kam was based on an incident which occurred in the Municipality of Mukdahan and the Municipality of Tambon Ban Phru, which was not an event which occurred in the Municipality of Tambon Tha Kam. Therefore, the Municipality of Tambon Tha Kam did not have the capacity to submit the matter together with an opinion to the Constitutional Court in reliance of such provisions because the problem did not occur with its own organisation.

By virtue of the reasons stated above, the Constitutional Court held that the Municipality of Tambon Tha Kam did not have the right to submit this matter together with an opinion to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
