



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 9/2541*

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

Re : Suphan Buri Provincial Court requested that a case be referred to the Constitutional Court for ruling.

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The Permanent Secretary of the Ministry of Justice submitted an application, dated 27th July B.E. 2541 (1998), to the Constitutional Court requesting for a ruling in a case where Suphan Buri Provincial Court referred the case of Mr. Wanchart Osukonthip and Mr. Saming Hormsuwan, domiciled in the Sukhapibal Committee constituency of Don Jedi, in Case No. 1287/2541 requesting that Suphan Buri Provincial Court issue an Order to withdraw the application for candidacy in the election of the Sukhapibal Committee of Mr. Nara Phrompanya due to lack of qualifications for a candidate prescribed in section 7 of the Sukhapibal Act, B.E. 2495 (1952), as amended by the Sukhapibal Act (No. 3), B.E. 2528 (1985), in conjunction with section 20 bis of the Act on Election of Members of the Municipal Assembly, B.E. 2482 (1939), as amended by the Act on Election of Members of the Municipal Assembly (No. 8), B.E. 2538 (1995) (repealed by the Act on Election of Members of the Municipal Assembly (No. 9), B.E. 2538 (1995)). In such case, Suphan Buri Provincial Court held that both applicants submitted applications under section 7 of the Sukhapibal Act, B.E. 2495 (1952), as amended by the Sukhapibal Act (No. 3), B.E. 2528 (1985), in conjunction with section 25 of the Act on Election of Members of the Municipal Assembly, B.E. 2482 (1939). Such provisions were considered as inconsistent with section 145 (3) and section 144 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This case was therefore a problem on provisions of law applicable to a case by the Courts which was subject to the prohibition in section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and there has not yet been a ruling of the Constitutional Court in relation to such provisions. Such opinion was therefore referred to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

* Published in the Government Gazette, Vol. 115, Part 77a, dated 27th October B.E. 2541 (1998)

The Constitutional Court held the following opinion. 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 and senators, the organic law on political parties, the organic law on the 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.” Section 145 (3) stated that “the Election Commission shall have the following powers and duties... (3) 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.” However, at the time, the law on election of members of local assemblies and local administrators had not yet been enacted. Section 327 (9) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “in addition to the provisions of this Constitution, the organic law on the Election Commission shall at least contain the following matters as its substance... (9) the commencement of the time at which the Election Commission may control, hold or cause to be held, an election of a local assembly or local administrators, which shall not be later than ten years as from the date of the promulgation of this Constitution.” Section 43 of the Organic Act on the Election Commission, B.E. 2541 (1998) only stated that “in order to comply with section 327 (9) of the Constitution, the Election Commission shall submit a Bill on election of members of local assemblies or local administrators to the Council of Ministers for submission to the House of Representatives within one year as from the promulgation of this Organic Act...”.

Therefore, prior to the enactment of a law on election of members of local assemblies or local administrators under section 144 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), Suphan Buri Provincial Court still had to apply the currently applicable laws, namely, section 7 of the Sukhapibal Act, B.E. 2495 (1952), as amended by the Sukhapibal Act (No. 3), B.E. 2528 (1985), which stated in paragraph one that “the Sukhapibal Committee shall consist of ... (4) 9 members with the qualifications and not under the prohibitions of an applicant for candidacy in an election of members of the Municipal Assembly elected by the people in such Sukhapibal area” and section 7 paragraph two, which stated that “in an election of the Sukhapibal Committee under (4), the procedure for election of members of the Municipal Assembly under the law on election of members of the Municipal Assembly shall apply *mutatis mutandis*.” The Act on Election of Members of the Municipal Assembly, B.E. 2482 (1939) prescribed the qualifications of eligible applicants for candidacy in an election of members of the Municipal Assembly whose fathers were foreigners in section 20, which stated that the qualifications under the law on election of members of the House of Representatives should apply. However, the law on election of members of the House of Representatives has been repealed by the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) and section 29 of such Organic Act stated that “a person eligible to become a candidate in an election of members of the Houses of Representatives... shall have the qualifications and not be under the prohibitions for an eligible applicant in an election of members of the House of Representatives under the provisions of the Constitution of the Kingdom of Thailand, B.E.

2540 (1997). In other words, an applicant for candidacy in an election of members of the Sukhapibal Committee whose father is a foreigner shall have the qualifications in section 107 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition, an application for the withdrawal of an application for candidacy must be submitted under section 25 paragraph one of the Act on Election of Members of the Municipal Assembly, B.E. 2482 (1939) to the Court of First Instance with jurisdiction in such constituency at least twenty days prior to the election date, and section 25 paragraph two stated that when the Court has accepted the application, proceedings under the Civil Procedure Code should be expediently held. This matter was therefore a case which Suphan Buri Provincial Court had to apply the above provisions of law to a case where such provisions of law were neither contrary to nor inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

By virtue of the reasons stated above, the Constitutional Court held that the provisions of law applicable to this case by the Court were neither contrary to nor inconsistent with section 144 paragraph two and section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
