



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 15/2541* Dated 19th November B.E. 2541 (1998)

**Re : The Election Commission requested for a Constitutional Court ruling
on the disentanglements of a person who failed to exercise voting rights.**

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The Election Commission submitted an application, dated 17th August B.E. 2541 (1998), to the Constitutional Court requesting for a ruling on whether or not the Election Commission had the power to prescribe rules and procedures on the disentanglement of the right to receive assistance from the State for eligible voters who failed to exercise voting rights without notifying an appropriate cause for such a failure or notified an inappropriate cause under section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998).

According to the application, the facts could be stated as follows. The Election Commission considered the matter on the disentanglements of a person who failed to exercise voting rights under section 68 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) and encountered a problem on whether or not the Election Commission possessed the power to prescribe rules and procedures on the disentanglement of the right to receive assistance from the State for eligible voters who failed to exercise voting rights without notifying a reasonable cause for such a failure or notified an inappropriate cause. The Election Commission was split into two differing opinions. One side was of the opinion that the Election Commission did not have the power to prescribe the rules and procedures on the disentanglement of the right to receive assistance from the State for such persons owing to inconsistencies with section 68 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which stated that “the person who fails to attend an election for voting without notifying the appropriate cause of such failure shall lose such rights as provided by law.” Such persons did not lose rights as a result of a prescription by the Election Commission. On the other side was the opinion

* Published in the Government Gazette, Vol. 116, Part 1a, dated 14th January B.E. 2542 (1999)

that the Election Commission possessed the power to prescribe rules and procedures on the disqualification of the right to receive assistance from the State because “as provided by law” in section 68 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) did not specify the type of law required. Therefore, section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), which provided for the Election Commission’s power to prescribe such rules and procedures on disqualification, was consistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the problems which required ruling were as follows:

1. whether or not the Election Commission possessed the right to submit the above problem to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997);

2. whether or not the Election Commission possessed the power to prescribe the rules and procedures on the disqualification of rights to receive assistance from the State for persons who failed to exercise voting rights without notifying an appropriate cause for such a failure or notified an unreasonable cause under section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998).

After an analysis of the problems, the Constitutional Court held the following opinion:

On the first issue, the Election Commission was an organ under the Constitution. The problem arisen was related to a problem on the powers to prescribe rules and procedures on the disqualification of rights to receive assistance from the State for persons who fail to exercise voting rights without notifying an appropriate cause for such a failure or notified an inappropriate cause under section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998). The Election Commission held diverging opinions as stated above and referred the matter together with an opinion to the Constitutional Court for a ruling. The Constitutional Court considered this case as a problem on the powers and duties of an organ under the Constitution in accordance with section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore accepted the application for consideration.

On the second issue, section 68 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that a person who failed to attend an election for voting without notifying the appropriate cause of such failure lost such rights as provided by law. However, section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) provided that an eligible voter who failed to exercise voting rights without notifying the appropriate cause of such failure or notified an inappropriate cause was disqualified from receiving assistance from the State as prescribed by

the Election Commission. A problem therefore arose as to whether or not the Election Commission possessed the power to prescribe rules and procedures for the disenfranchisement of eligible voters who failed to attend an election for voting without notifying the appropriate cause of such failure or notified an unreasonable cause from receiving assistance from the State.

Section 68 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that “the person who fails to attend an election for voting without notifying the appropriate cause of such failure shall lose such rights as provided by law.” However, the National Assembly only enacted in section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), that “in the case where a voter fails to exercise the right to vote in an election without notifying the appropriate cause of such failure... or has notified the cause but it was not reasonable, such person shall be deemed to be a person failing to exercise the right to vote who does not notify the appropriate cause of such failure... and shall lose the right to receive assistance from the State in accordance with the rules and procedures prescribed by the Election Commission.” Such a provision did not clearly state which “rights” constituted as rights to receive assistance from the State. If a right to receive assistance from the State was a right recognized by the Constitution, the restriction of such rights must specify the provision of the Constitution which authorized such a restriction of rights and liberties of a person in the law. Section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was incomplete and unclear in its provision on the disenfranchisement of rights and conferred powers on the Election Commission to prescribe rules and procedures regarding disenfranchisement. This was equivalent to conferring powers on the Election Commission to prescribe the disenfranchisement of rights and the rules and procedures for the disenfranchisement of such rights without having to pass through the legislative process of the National Assembly. This case was therefore not in accordance with section 68 and section 334 (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was therefore a provision of law contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and unenforceable under section 6 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 Election Commission did not possess the power to prescribe rules and procedures on the disenfranchisement of rights of eligible voters who failed to attend an election for voting without notifying the appropriate cause of such failure or notified an unreasonable cause under section 23 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998).
