

Summary of the Constitutional Court Ruling No. 5/2543

Dated 14th February B.E. 2543 (2000)*

Re : The President of the National Assembly requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where the Election Commission issued a ruling to determine the prohibited characteristics of candidates in the election of senators.

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1. Background and summarized facts

The President of the National Assembly submitted an application, dated 27th January B.E. 2543 (2000), to the Constitutional Court requesting for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on the powers and duties of the Election Commission regarding its ruling which determined the prohibited characteristics of candidates in the election of senators.

The Election Commission had announced the opening of applications for candidates of senator elections between 19th – 25th December B.E. 2542 (1999). A handbook on applications for election candidature was given to the applicants. The handbook, however, did not offer an explanation of the word “other State official” stated in section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As a result, many applicants understood that they did not possess a prohibited characteristic. Thereafter, the Provincial Election Commission examined the evidence supporting each application and the Constituency Director announced the list of candidates. Subsequently, however, the Election Commission issued a ruling on the word “other State official” which resulted in candidates being notified of the non-acceptance of their applications. The disqualified applicants for election candidature included members of committees or sub-committees in 28 positions who were said to have the prohibited characteristics under section 87 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) in conjunction with section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In this regard, the following divergent opinions were expressed by two opposing sides.

The first side, which comprised of applicants for election candidature who had been disqualified as a result of the Election Commission ruling, was of the opinion that such a ruling was unconstitutional under section 109 (11) and section 109 (12) of the Constitution

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of the Kingdom of Thailand, B.E. 2540 (1997). The word “other State official” was interpreted beyond the intentions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) thereby restricting the rights of the applicants and resulting in the withdrawal of the applications despite the fact that the list of eligible candidates had already been announced.

The second side, the Election Commission, was of the opinion that “other State official” under section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) must possess the following characteristics:

(1) the position held must have been established and specified by laws, rules or regulations of the official service;

(2) office was taken by an appointment made by virtue of laws, rules or regulations of the official service;

(3) the powers and duties of such a position were prescribed by laws, rules or regulations of the official service; the exercise of such powers and duties could affect or institute legal relationships with others;

(4) persons holding such positions might receive partial or full remuneration from the State.

Hence, any applicant who possessed such prohibited characteristics was disqualified from being a candidate in the election of senators.

2. Preliminary issue

The Constitutional Court considered the application and the documents in its support and held that the preliminary issue to be considered was whether or not the President of the National Assembly had the power to submit this application to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The objection of the applicants for senator election candidature was related to section 87 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), which provided that “a person entitled to apply for the election of senators shall have the qualifications and shall not have the characteristics prohibiting him from being an eligible applicant...”. The applicants’ names had been openly listed in an announcement. However, the Election Commission, in the exercise of powers under section 144 paragraph one in conjunction with section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) issued a ruling on a problem or dispute which arose on the meaning of the word “other State official” in section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) regarding prohibited characteristics of a person who wished to exercise the right to become a candidate. Certain applicants objected that the Election Commission did not have the power to make a ruling to determine the meaning

of such words which were words in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). A problem therefore arose as to the powers and duties of the Election Commission, which was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), pursuant to section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Hence, the Constitutional Court had the power to accept this matter for consideration.

3. The issues considered by the Constitutional Court

The first issue considered was whether or not the Election Commission had the power to make a ruling on the words “other State official,” which were words in the constitutional provisions.

The second issue considered was whether or not the Election Commission ruling which determined that the meaning of the words “other State official” included persons holding various positions, a total of 28 positions, as evidenced in the ruling documents of the Election Commission on positions within the scope of other State officials under section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was a ruling consistent with section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The third issue considered was whether or not the issue of notifications of declined applications as a result of the ruling of the Election Commission on the words “other State official,” which was made after a prior announcement of the Constituency Director accepting such applications for senator election candidature, was an act consistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

On the first issue, it was held that the Election Commission possessed the power to make a ruling on the provisions in section 87 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) and on the words “other State official” in section 109 (11) in conjunction with section 126 (4) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, a dispute arose in such a case pursuant to which the President of the National Assembly referred the matter to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Hence, the Constitutional Court had the power to make a ruling on the words “other State official” in section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in order to reach a final and binding decision under section 268 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue, it was held that the consideration of the meaning of the words “other State official” in section 109 (11) was an interpretation of a provision of law which

restricted the rights of a person to make an application to become a candidate in an election of members of the House of Representatives or senators. Hence, the provisions which restricted the rights of a person had to be interpreted narrowly. In the interpretation of such words, general words should be defined in the same sense as the specific words which precede it. In other words, in the case where a provision of law contained two or more specific words which were followed by a general word, the general word should have a narrower meaning than the usual meaning of such word. Such general word should be defined in a specific sense based on the same topic and category as the specific words which precede it. The words “other State official” were general words. Thus, those words should be defined consistently with or along the same lines as the words “official or employee of a State agency, State enterprise or local government organization.” Therefore an “other State official” should have the following characteristics:

- (1) being appointed or elected in accordance with the law;
- (2) having the powers and duties to perform or the duty to comply with the law and being a permanent position;
- (3) being under the control and supervision of the State;
- (4) receiving a salary, wage or remuneration under the law.

Regarding the Election Commission’s ruling which determined the definition of the word “other State official” in section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), considered under the various criteria, that persons holding 28 different positions were “other State officials,” the Constitutional Court was of the opinion that of such persons who held positions as members of committees or sub-committees, 27 positions were appointed or elected in accordance with the law, had the powers and duties to perform or the duty to comply with the law and were permanent position. Nevertheless, the exercises of powers or the performances of duties of such members of committees and sub-committees were the exercises of powers or performances of duties as a group of persons constituted as a committee or sub-committee. Each individual member did not have the capacity to exercise the powers or perform the duties which belonged to the committee or sub-committee because the law conferred such powers and duties on the committee or sub-committee and not on the individual members even though such members were within the control and supervision of the State and earned salaries, wages or remuneration under the law. Therefore, it was held that the ruling of the Election Commission that persons holding 27 various positions were other State officials under section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was a ruling which was inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Such positions were as follows:

- (1) member of the Central Islamic Committee of Thailand;
- (2) member of a Provincial Islamic Committee;

- (3) member of the Anti-Money Laundering Commission;
- (4) President or executive board member of the Telephone Organisation of Thailand;
- (5) President or member of the Police Officials Commission;
- (6) member of a Provincial Committee for Elementary Education;
- (7) permanent member of a Rajabhat Institute Council;
- (8) member of a Rajabhat Institute Council;
- (9) member of a Provincial Sub-Committee for Police Officials;
- (10) member of a Sub-Committee for Teaching Officials;
- (11) member of a Ministry's General Sub-Committee;
- (12) member of a Departmental General Sub-Committee;
- (13) member of a Provincial General Sub-Committee;
- (14) member of a Sub-Committee for Provincial Administrative Organisation Officials;
- (15) member of the Sub-Committee for Assisting Agriculturists and the Impoverished;
- (16) member of Chulalongkorn University Council;
- (17) member of Phra Pok Klao Institute;
- (18) member of the Industrial Estate Board of Thailand;
- (19) member of the Warehousing Organisation;
- (20) member of the Sub-Committee to the Committee for the Management of Provincial Circulation of Capital Funds;
- (21) member of the National Institute of Development Administration Council;
- (22) member of the Law Society Council;
- (23) member of the Lawyers Ethics Council;
- (24) member of a Board of Appeals in a Municipal, Sukhaphibal or Local Administrative Area;
- (25) member of the Agricultural Rehabilitation and Development Fund Committee;
- (26) member of a University Council;
- (27) board member of the Scientific and Technological Research Institute of Thailand.

Regarding the Election Commission's ruling that a supplementary judge was an "other State official" under section 109 (11) of the Constitution of the Kingdom of Thailand,

B.E. 2540 (1997), the Constitutional Court held that as a supplementary judge formed part of the quorum of judges in the adjudication of cases, who also had the powers and duties to institute proceedings or act according to the law and was governed *mutatis mutandis* by the disciplinary provisions of judicial officials under the law on rules of judicial officials. Moreover, a supplementary judge was under the control and supervision of the State and received a stipend, travel expenses, accommodation expenses and other remuneration from the State. The Election Commission's ruling that the position of a supplementary judge was an "other State official" was therefore consistent with section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the third issue, the Constitutional Court considered that the application requested for a consideration of the conduct of the Election Commission, which was beyond the powers of the Constitutional Court to rule upon.

4. Ruling of the Constitutional Court

The Constitutional Court held that the Election Commission's ruling that 27 positions held by persons were "other State officials" under section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was inconsistent with section 109 (11) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, the ruling that a person holding the position of a supplementary judge was an "other State official" was constitutional.
