

Summary of the Constitutional Court Ruling No. 13/2543

Dated 17th March B.E. 2543 (2000)*

Re : The Election Commission requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case of a dispute on the powers and duties of the Election Commission and the Courts of Justice.

.....

1. Background and summarized facts

The Election Commission had issued an order to the constituency director to withdraw the acceptance of an application for election candidature after an examination revealed that the applicant was unqualified or had a characteristic which prohibited him from becoming a candidate in an election of senators. Thereafter, the Civil Court issued an order in the case of an election of senator in Case No. Sen. 3/2543 that the order of the constituency director which withdrew the acceptance of the application for election candidacy was unenforceable because the time period for examination and investigation under section 32 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) had already expired. The Election Commission considered that such a Court Order encroached upon the exercise of investigative and adjudication powers of the Election Commission under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Hence, this was a dispute pertaining to the powers and duties of organs under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The Election Commission and the Courts of Justice were both organs under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). When a dispute arose on the competent powers and duties of the Election Commission and the Courts of Justice and the Chairman of the Election Commission submitted the 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), the Constitutional Court had the power to make such a ruling.

* Published in the Government Gazette, Vol. 117, Part 104a, dated 14th November B.E. 2543 (2000)

3. The issues considered by the Constitutional Court

The Constitutional Court considered whether or not the case of the Provincial Court or the Civil Court's exercise of power under section 34 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was an encroachment of the Election Commission's exercise of powers of fact-finding investigation and inquiry and adjudication under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court divided the matter into two issues and held the following opinion:

First issue. The constituency director had announced the opening of applications for senatorial candidacy. Thereafter, an objection was filed that an applicant was unqualified or possessed a prohibited characteristic. The Election Commission then conducted a fact-finding investigation and inquiry and adjudication under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and instructed the constituency director to proceed with the withdrawal of such application. Subsequently, the person whose application had been withdrawn filed an application at the Provincial Court or Civil Court, who held that the withdrawal of applications by the constituency director pursuant to the Order of the Election Commission was not proper by reason of the expiration of the time period which the constituency director could conduct an investigation and inquiry under section 32 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998). The issue which had to be considered was whether or not such a Court Order constituted an encroachment of the exercise of investigation and adjudication powers of the Election Commission under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the exercise of fact-finding investigation and inquiry and adjudication powers by the Election Commission under the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) was a power and duty under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and was an exercise of judicial powers.

Second issue. Was the exercise by the Provincial Court or the Civil Court of the powers under section 34 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) an encroachment of the fact-finding investigation and inquiry and adjudication powers of the Election Commission under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that the Provincial Court and the Civil Court had the power to consider the application of the applicant for candidacy whose name did not appear in the announcement of the constituency director. Consideration could only be made on

whether or not the application could be accepted under section 34 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998). If the case was on a problem or dispute arising of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) on matters other than such matters and the Election Commission had already exercised powers under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the case should be subjected to the ruling of the Election Commission.

The Provincial Court or Civil Court's exercise of powers under section 34 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) to consider the conduct of the constituency director in implementing candidacy application procedures under section 32 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) and issuing of Orders for the acceptance or non-acceptance of applications was only a ruling of the powers of the constituency director and not a ruling of the powers of the Election Commission. This was particularly true in the case of the Civil Court's Order in Case No. Sen. 2/2543 where there were no facts that the Election Commission exercised the powers of fact-finding investigation and inquiry and adjudication under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The case was therefore not an encroachment of the exercise of powers by Election Commission.

4. Ruling of the Constitutional Court

The Provincial Court and Civil Court's exercise of powers under section 34 of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998) where the Election Commission had not yet exercised its powers of fact-finding investigation and adjudication and inquiry under section 145 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was therefore not an encroachment of the exercise of powers of the Election Commission.
