

Summary of the Constitutional Court Ruling No. 23/2543

Dated 30th May B.E. 2543 (2000) *

Re : The National Counter Corruption Commission requested for a Constitutional Court ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where Mr. Jirayu Jarassathien intentionally submitted a false account showing particulars of assets and liabilities and supporting documents.

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1. Background and summarized facts

Mr. Jirayu Jarassathien, the respondent, was appointed to hold the position of advisor to the Deputy Minister of Public Health (Mr.Thirawad Siriwanan) from 18th November B.E. 2540 (1997) under the Order of Ministry of Public Health No. 1086/2540. The respondent was therefore a political official under section 4 subparagraph (10) of the Act on Political Officials, B.E. 2535 (1992) and was under the duty to submit an account showing particulars of assets and liabilities under section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

It was appeared that an item of assets under the examination were different from those disclosed by the respondent, namely bank deposits on 17th December B.E. 2540 (1997). The respondent had totally 13 deposit accounts in various banks in the total sum of Baht 4,764,318.65. However, he disclosed that he had 2 deposit accounts in the total sum of Baht 34,862,213.64 as his assets in the category of bank deposits. In this connection, the respondent attached the copy of savings deposit account passbook of Pradipadh Branch of Krungthai Bank Public Company Limited showing the balance as of the date of 17th December B.E. 2540 (1997) in the total sum of Baht 2,028,353.64 and the copy of savings deposit account passbook of Ngamwongwan Branch of Thai Commercial Bank Public Company Limited showing the balance as of the date of 17th December B.E. 2540 (1997) in the total sum of Baht 32,833,860, as evidences supporting the existence of his assets (bank deposits). The National Counter Corruption Commission (NCCC) was of the opinion that the respondent failed to disclose the actual existing assets as of the date of submission of the account. The NCCC also discovered another 11 deposit accounts in addition to those disclosed by the respondent. Furthermore, the sum of deposits in savings account of Ngamwongwan Branch of Thai Commercial Bank Public Company Limited was inaccurate with the sum discovered by the NCCC from its examination.

* Published in the Government Gazette, Vol. 118, Part 46a, dated 25th June B.E. 2544 (2001).

2. Preliminary issue

The NCCC resolved that the respondent intentionally submitted a false account showing particulars of assets and liabilities and supporting documents and requested for a Constitutional Court ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court therefore accepted this application for consideration.

3. The issues considered by the Constitutional Court

Did the respondent intentionally submit an account showing particulars of assets and liabilities and supporting documents which contained false statements under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the following opinion:

The Constitutional Court offered an opportunity to the applicant and the respondent to give statement or testimonies prior to passing a ruling and held a trial to hear the statement which could be summarized as follows. On 17th December B.E. 2540 (1997), which was the due date of the submission of an account, the respondent deposited a cheque in the amount of Baht 31,350,000 received from Sermsuwan Travel Company Limited (the company) into the account opened with Ngamwongwan Branch of Thai Commercial Bank Public Company Limited at around 12.57 pm. Thereafter, the passbook was copied as a supporting document in the submission of the account showing particulars of assets and liabilities and was enclosed in an envelope containing the account which then was sealed and put in a briefcase. The respondent delivered the briefcase to Mr. Chatchai Chonpituk, his driver, to be kept in a car and ordered him to bring that car for checking its condition due to some problems occurred in the morning. Shortly after that, Mrs. Pornsook Sermsuwan, the issuer of the cheque in the amount of Baht 31,350,000, came to visit him in the Ministry of Public Health and asked for the return of that cheque owing to financial problem of her company. The respondent went to the Bank and requested for the return of the cheque without bringing the passbook with him. The bank operated according to the request and the operation was finished at 1.46 pm. Then, he returned that cheque to the issuer. It was around 3.00 pm. when the driver brought back the car. In the respondent's view, it was nearly a time of closing the Bank's operation and the passbook could not be adjusted within that time. Moreover, due to the last day of the time limit when he had to submit the account to the applicant, there was not enough time to adjust the accuracy of the amount of money declared in the account. The respondent therefore assigned Mr. Tim Kampisuth (Kamtho) to deliver the envelope containing the account and supporting documents to the applicant and the documents was received by the applicant at 4.18 pm.

The respondent explained that the receipt of the cheque was resulted from his gambling at Bacara in Burswood Hotel, Perth, Australia. After gambling, he deposited chips

with the company and upon coming back to Thailand, the company would return those chips in a cheque. The respondent further explained that he received the first cheque dated 18th December B.E. 2540 (1997) in the amount of Baht 11,350,000 and then deposited it in the new account opened with Sukhapibal I Branch, Bang Kapi, Kasikorn Thai Bank Public Company Limited. On the same day, the respondent drew out Baht 11,110,650 in cash from the account. Thereafter, the respondent received another cheque from Mrs. Pornsook Sermsuwan in the amount of Baht 20,000,000 on 26th January B.E. 2541 (1998) and deposited it in the account opened with Ngamwongwan Branch of Thai Commercial Bank Public Company Limited on 29th January B.E. 2541 (1998).

After hearing, the Constitutional Court reached the conclusion that on 17th December B.E. 2540 (1997), the respondent had no deposits in the amount of Baht 31,350,000 in a savings account opened with Ngamwongwan Branch of Thai Commercial Bank Public Company Limited. On that day, the actual deposits the respondent had were in the amount of Baht 1,483,860. The amount of money showing in the copy of the passbook copied by the respondent and submitted to the applicant on 17th December B.E. 2540 (1997) were inconsistent with the actual amount, and therefore the disclosure of assets in the category of deposit bank accounts was inaccurate. The defences given by the respondent to the Constitutional Court were unreliable. It appeared later that there was a cheque in the amount of Baht 21,600,000 deposited in the account opened with Ngamwongwan Branch of Thai Commercial Bank Public Company Limited on 29th January B.E. 2541 (1998). This fact confirmed that on 17th December B.E. 2540 (1997), the respondent had definitely no money in the amount of Baht 31,350,000. Moreover, the respondent referred Mrs. Pornsook Sermsuwan as a witness, but the respondent failed to bring her to testify before the Court as well as to bring any other evidences to support his defences. The defences of the respondent therefore could not be reliable.

4. Ruling of the Constitutional Court

The Constitutional Court held that Mr. Jirayu Jarassathien intentionally submitted a false account showing particulars of assets and liabilities and supporting documents under section 291, section 292 and section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
