

Summary of the Constitutional Court Ruling No. 28/2543

Dated 6th July 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. Mahusen Masuyi intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.

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1. Background and summarized facts

Mr. Mahusen Masuyi (the respondent) was appointed to a post at the Office of the Secretariat to the Prime Minister from 1st January B.E. 2540 (1997) by Order of the Office of the Prime Minister No. 129/2540, dated 8th April B.E. 2540 (1997). The respondent was therefore a political official under section 4 (16) and section 10 (4) of the Rules of Political Officials Act, B.E. 2535 (1992) and vacated office on 7th November B.E. 2540 (1997) at the same time as General Chavalit Yongjaiyut, the Prime Minister and appointer. In the interval, the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was promulgated. According to the transitory provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 317 stated that the Council of Ministers which administered the State affairs at the date of promulgation of this Constitution remained as the Council of Ministers under this Constitution. The respondent could therefore be deemed to have retaken office under this Constitution on the date of promulgation, being 11th October B.E. 2540 (1997), which was the first date of taking office of the Council of Ministers in their capacity as political officials, and his office terminated upon the vacation of office of the appointer. The National Counter Corruption Commission (NCCC), the applicant, considered that the respondent was under a duty to submit an account showing particulars of assets and liabilities of himself, his spouse and his children who had not yet become *sui juris* under section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As a result, the respondent had to submit an account within 9th November B.E. 2540 (1997) after the taking of office, within 6th December B.E. 2540 (1997) after the vacation of office and once more within 6th December B.E. 2541 (1998) upon the expiration of one year after the vacation of office. From the facts, the respondent did not submit an account to the applicant. The applicant proceeded to uncover the intention of the respondent by sending letters to notify the respondent and instructing that the respondent give a statement of facts

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on a total of 4 occasions. The respondent, however, did not submit an account and did not give any statement. The applicant therefore considered the matter in its meeting No. 47/2542 on 9th December B.E. 2542 (1999) and unanimously resolved that the respondent intentionally failed to submit an account as prescribed by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The NCCC, the applicant, resolved that the respondent intentionally failed to submit an account 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 could therefore accept this matter for consideration.

3. The issues considered by the Constitutional Court

The Constitutional Court offered an opportunity to the relevant persons to give statements or testimonies prior to passing a ruling and held a trial to hear the statements of the applicant and the respondent. The following considerations were made.

On the first issue, the Constitutional Court considered whether or not the respondent intentionally failed to submit an account under the Constitution.

From the fact-finding investigation of the Constitutional Court, it appeared that the respondent had posted a letter to the Secretary-General of the NCCC on 24th November B.E. 2540 (1997) as evidenced by the Domestic Postal Service Receipt No. 6010, posted at Narathiwat Post Office. However, it could not be confirmed as to whether or not such documents sent was an account because the Office of the NCCC sent a letter confirming that it had not received such documents. Moreover, Dusit Post Office, which was the postal office responsible for the delivery, testified that verification was not possible due to the fact that the evidence of delivery had been destroyed under their rules. What remained was a letter dated 8th May B.E. 2541 (1998) to the Secretary-General of the NCCC in reply to the first letter of warning, which the respondent reaffirmed that he had prepared an account and had already arranged for its delivery. The Secretary-General of the NCCC sent a letter dated 26th October B.E. 2541 (1998) to the respondent informing that during that time there was a large volume of similar accounts from local administrators and members of local assemblies from throughout the country delivered to the Office of the NCCC by post. Hence, there was a possibility that the respondent's account was mixed amongst the pile of accounts and could not be extracted easily. The Secretary-General of the NCCC therefore requested the respondent to send a copy of such account to the NCCC. The respondent, however, did not undertake any action. Hence, it could not be conclusively held that on the occasion of the submission of account upon the taking of office the respondent intentionally failed to submit such an account.

On the second issue, the Constitutional Court considered whether or not the respondent intentionally failed to submit an account within 6th December B.E. 2540 (1997) in the case of vacation of office and within 6th December B.E. 2541 (1998) in the case of the expiration of one year after the vacation of office as required by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. The applicant sent warning letters to the respondent's attention in order that the respondent could rectify his actions on four occasions according to letters dated 22nd April B.E. 2541 (1998), 26th October B.E. 2541 (1998), 2nd June B.E. 2542 (1999) and 12th November B.E. 2542 (1999) respectively. It was clearly stated therein that the respondent should give reasons for his non-compliance. After the applicant reached a resolution, the respondent sent a letter to the applicant requesting for a revision of the resolution. The respondent affirmed and claimed that he had previously submitted an account. In the final part of his letter, the respondent requested for the applicant to send him a statement form and the relevant details because a form was not available to him and his previous statement had been completely damaged by rainwater. The respondent also affirmed that his assets, the assets of his wife and that of his children had remained unchanged. Nevertheless, such facts could not be clearly proven because the respondent did not proceed to submit any account in the case of vacation of office and upon the expiration of one year after the vacation of office. The evidence was therefore sufficient to conclude that the respondent intentionally failed to submit an account to the applicant under section 292 paragraph one subparagraph (2) and section 292 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court held that Mr. Mahusen Masuyi, the respondent, intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents as prescribed by section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
