

Summary of the Constitutional Court Ruling No. 19/2544

Dated 3rd August B.E. 2544 (2001)*

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. Prayudh Mahakijisiri intentionally submitted an account showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts which should have been disclosed.

.....

1. Background and summarized facts

The National Counter Corruption Commission (NCCC), the applicant, submitted an application to the Constitutional Court for a ruling under section 295 of the Constitution in the case where Mr. Prayudh Mahakijisiri, the respondent, intentionally submitted an account showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts which should have been disclosed. In summary, the respondent, who held the office of senator, submitted an account showing particulars of assets and liabilities and supporting documents to the applicant in the case of taking office. The applicant examined the accuracy and actual existence of assets and liabilities and discovered that there were items of assets which the respondent did not include in the account. The applicant considered such a list of assets with the explanation of the respondent and dismissed the submissions. Thereafter the applicant unanimously resolved that the respondent submitted an account which contained false statements or concealed facts which should have been disclosed in the case of taking office and the matter was referred to the Constitutional Court for a ruling under section 295 of the Constitution.

2. Preliminary issue

Could the Constitutional Court accept the application for consideration under section 295 of the Constitution?

The Constitutional Court held that this was a case under section 295 of the Constitution and therefore accepted the application for consideration.

* Published in the Government Gazette, Vol. 119, Part 31a, dated 3rd April B.E. 2545 (2002)

3. The issues considered by the Constitutional Court

The Constitutional Court held that there were the following preliminary issues raised by the respondent which required a preliminary ruling:

On the first issue, the respondent did not submit an account under the Constitution but had made a submission under the Disclosure of Assets and Liabilities of Senators and Members of the House of Representatives Act, B.E. 2539 (1996) and was not subject to the application of section 295 of the Constitution because the respondent had already vacated office.

The Constitutional Court held that it had ruled in Ruling No. 12/2543 that a senator who had been appointed under the previous Constitution was deemed as taking up a new office under the new Constitution with 11th October B.E. 2540 (1997) being deemed as the commencement date and there was a duty to submit an account to the applicant under section 291 of the Constitution within thirty days as from the date of taking office. The submission of account by the respondent was therefore a submission of an account under this Constitution and the respondent was within the scope of application of section 295 of the Constitution because the words “a person holding a political position” in section 295 of the Constitution also included those who had vacated the offices of political positions. The purpose was to ensure the equal treatment of all persons who had held political positions. This implication was made after a consideration of section 291 in conjunction with section 292 of the Constitution which provided that a person holding a political position was under a duty to submit an account on the occasion of taking office, vacation of office and upon the expiration of one year after the vacation of office. Even if the respondent had already vacated the office of a political position and could not further vacate a position, the respondent could still be imposed a prohibition from holding any political position for a period of five years. Therefore, the respondent was within the application of section 295 of the Constitution.

On the second issue, the respondent raised the issue that two members of the NCCC, viz Lieutenant General Sawat Or-rungroj and Khun Ying Pariya Kasemsan Na Ayutthaya, were disqualified by reason of violating section 258 in conjunction with section 297 of the Constitution.

The Constitutional Court held that, in the cases of the directorship of The Best General Communication Company Limited of Lieutenant General Sawat Or-rungroj and the case of directorship of Wongamorn Company Limited of Khun Ying Pariya Kasemsan Na Ayutthaya, the Constitutional Court had already held in Ruling No. 18/2544, dated 26th June B.E. 2544 (2001), that Lieutenant General Sawat Or-rungroj and Khun Ying Pariya Kasemsan Na Ayutthaya did not violate section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution. As for the case of Khun Ying Pariya Kasemsan Na Ayutthaya being a director and accounting employee of Kasemwanarom Company Limited, the Constitutional Court held that the resignation from directorship of Kasemwanarom

Company Limited was legally completed and effective when the registrar issued a certificate on 9th April B.E. 2542 (1999) because Khun Ying Pariya Kasemsan Na Ayutthaya had already expressed an intent to resign in writing submitted to the authorised director and the registrar had registered such a withdrawal from the list of directors. Moreover, it did not appear that Khun Ying Pariya Kasemsan Na Ayutthaya was subsequently re-appointed as a director of the company. Therefore, Khun Ying Pariya Kasemsan Na Ayutthaya did not violate section 258 paragraph one subparagraph (3) and section 258 paragraph two of the Constitution. Lieutenant General Sawat Or-rungroj and Khun Ying Pariya Kasemsan Na Ayutthaya were therefore constitutionally elected as members of the NCCC. It was therefore not necessary to rule on whether or not the applicant's application was lawful.

On the third issue, the Constitutional Court had to rule on whether or not the Regulations on the Performance of Duties of the National Counter Corruption Commission, B.E. 2541 (1998) was still in force and whether or not the applicant had violated such Regulations.

The Constitutional Court held that such Regulations ceased to be in force because the Organic Act on Counter Corruption B.E. 2542 (1999) came into force as from 18th November B.E. 2542 (1999). This was in accordance with section 321 paragraph two of the Constitution which prescribed a specific commencement date and termination date for such Regulations. It was therefore not necessary to rule on whether or not the applicant had violated such Regulations.

On the fourth issue, the respondent objected that he did not know of certain facts at the time of submitting the account. He had therefore not committed a prohibited act under section 295 of the Constitution.

The Constitutional Court held that the word "intentionally" in section 295 of the Constitution meant only an ordinary intention that the respondent knew or did not know of the existence of such assets and liabilities. The respondent's culpability of the act was sufficient. There was no need for a special intention.

On the fifth issue. The respondent claimed that the assets which were not declared in the account were assets acquired prior to the taking office of a political position. Those assets did not cause an advantage or disadvantage to any person. This was therefore not an intention under section 295 of the Constitution.

The Constitutional Court held that the only issue to be considered in section 295 of the Constitution was whether or not the holder of a political position submitted an account within the time limit and whether or not the submitted account was accurate with the facts on the date of submission. It was not necessary to consider whether the assets were acquired prior to or after the taking of office in a political position, the issue of corruption or how the non-disclosure of such assets in the account could confer a benefit or create a disadvantage to any person.

The issues under the application which required further consideration were as follows: First issue. Whether or not the respondent intentionally submitted an account containing false statements or concealed facts which should have been disclosed.

In the case where the respondent's assets were not disclosed in the account, the Constitutional Court held that the following opinion on the defences raised by the respondent. The respondent claimed that his spouse administered all the documents relating to the assets and therefore the respondent could not remember that he had those assets in possession and that those assets were acquired prior to his taking office in a political position. However, from the testimony of the spouse, the respondent kept deposit account passbooks to himself with only certain passbooks being kept with the spouse. Moreover, in opening a deposit account and dealing in transactions with commercial banks, the account opener was required to affix his signature as evidence. In addition, the respondent testified that the commercial banks had sent regular monthly statements notifying the balances of current deposit accounts. It was therefore not credible that the respondent was not aware of the 9 deposit accounts. As for the 9 plots of land, even if the spouse was the custodian of the title documents, most of the land had been acquired through purchase and therefore the respondent should have known of those plots. The defence of the respondent was therefore not credible and it could not be accepted that the respondent was not aware of the existence of such assets.

In the case of the properties of his spouse, the Constitutional Court held that section 291 of the Constitution provided that the submitter of an account must show the particulars of the assets and liabilities of the spouse accurately and according to the facts. Therefore, it was the duty of the spouse to notify the submitter of the account of her assets and liabilities because the provisions of section 295 of the Constitution provided for an assumption of liability on the respondent for the acts of the spouse. This followed from the fact that the respondent and his spouse were under a duty to support each other. Both should have known of the financial status and the assets and liabilities of one another. Moreover, the assets of the spouse which had not been declared in the account were numerous. It was therefore not credible that the respondent did not know of such facts. The defence of the respondent lacked substance and could not be accepted.

On the second issue, when it appeared that the respondent intentionally submitted an account containing false statements or concealed facts which should have been disclosed, from when should the respondent be prohibited from holding any political position for a period of five years?

The Constitutional Court held that the date of vacation of office was the actual date when the office was vacated because such an interpretation would render section 295 of the Constitution applicable to all cases under section 292, whether they may be cases where the person concerned still held the position or had already vacated the position prior to a ruling of the Constitutional Court.

The respondent vacated the office of senator pursuant to section 315 paragraph three of the Constitution on 22nd March B.E. 2543, which was a position under the cause of action under section 295 of the Constitution. Therefore, the respondent was prohibited from holding any political position for a period of five years as from the date of vacating office as senator, being as from 22nd March B.E. 2543.

4. Ruling of the Constitutional Court

The Constitutional Court held by a majority of votes that Mr. Prayudh Mahakijisiri, the respondent, intentionally submitted an account showing particulars of assets and liabilities and supporting documents containing false statements or concealed facts which should have been disclosed under section 295 of the Constitution and was therefore prohibited from holding any political position for a period of five years as from the date of vacation of position of senator, being the position in the cause of action, as from 22nd March B.E. 2543 (2000).
