

Summary of the Constitutional Court Ruling No. 20/2544

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 Police Lieutenant Colonel Thaksin Shinawatra 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.

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1. Background and summarized facts

The National Counter Corruption Commission (NCCC) submitted an application dated 16th January B.E. 2544 (2001) requesting for a Constitutional Court ruling under section 295 of the Constitution in the case where Police Lieutenant Colonel Thaksin Shinawatra 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.

The facts in the application and supporting documents could be summarized as follows:

Police Lieutenant Colonel Thaksin Shinawatra, the respondent, held the position of Deputy Prime Minister in the government of General Chavalit Yongchaiyut, the Prime Minister, and had submitted accounts under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on 3 occasions.

The first occasion was the case of taking office, submitted on 7th November B.E. 2540 (1997).

The second occasion was the case of vacation of office, submitted on 4th December B.E. 2540 (1997).

The third occasion was the case of the expiration of one year after the vacation of office, submitted on 4th December B.E. 2541 (1998).

* Published in the Government Gazette, Vol. 118, Part 77a, dated 7th September B.E. 2544 (2001)

The NCCC, the applicant, examined the accuracy and existence as well as the changes to the assets and liabilities in the case of taking office and vacation of office and reported the result of the examination of the changes of assets and liabilities in order to make an announcement in the Government Gazette.

As for the case of the expiration of one year after the vacation of office, during the examination of the accuracy and existence as well as the changes in the assets and liabilities, it appeared in September B.E. 2543 (2000) that the media had presented news of the transfer of shares by the respondent to his maids, servants, drivers, security guards and other close persons over a period of time. In this regard, Acting Second Lieutenant Sagneam Busbaban sent a letter to the applicant requesting an investigation of the respondent's account.

The applicant appointed a sub-committee to examine and conclude the result of the examination of the assets and liabilities of the respondent. In a meeting of the sub-committee No. 98/2543 on 26th December B.E. 2543 (2000), it was concluded that from an examination of the facts admitted by the respondent, it appeared that the respondent did not disclose assets which were in the names of himself, his spouse and in the names of other persons in the accounts submitted to the applicant. The consideration could be separated into the following 2 issues:

(1) Regarding the assets in the name of the respondent and his spouse, it appeared that the respondent did not disclose the particulars of assets in his name and did not disclose the particulars of assets in the name of his spouse.

The applicant considered this matter and held that such assets had negligible value. Such non-disclosure did not confer any benefit or disadvantage to the respondent. It was therefore held that the respondent did not intentionally conceal such particulars of assets in the 3 accounts submitted.

(2) As for assets in the names of others, it appeared that the respondent did not disclose the particulars of assets belonging to himself and/or his spouse which were in the names of others. The respondent gave reasons for the use of the names of others which could be summarized as stating that some companies were acquired through the purchase of a portion of shares from the original shareholders who were in financial difficulties and requested for his help. Such shareholders did not wish for others to know that they were being assisted by the respondent's spouse. In other companies, the numbers of shareholders were increased in order to secure a majority in passing resolutions of the shareholders. Other companies were newly registered to accept hire works from other companies and therefore the shares in such companies were purchased in order to assist the original shareholders of such companies. Some companies had terminated their operations. As for some companies, there was a need to protect the reputation of himself and/or his spouse or of the companies who held shares, if any, such as Alpine Golf and Sport Club Company Limited. In addition, the respondent stated that there was no intention to not disclose the particulars of such assets because he was not aware of the facts on shareholdings which was

managed by his spouse. The respondent did not know of the details of shareholdings of other persons and did not know of the details of the management of the businesses in those companies belonging to his spouse. Assets, i.e. the shares, which were not disclosed in the accounts, when compared to the assets included in the account on each occasion, had minimal value. The respondent and his secretary did not understand the legal provisions of the regulations of the NCCC and the details on the inclusion of particulars of assets in the account. Above all, the disclosure or non-disclosure of such assets did not constitute a cause for the respondent to acquire or lose benefits in any manner.

The applicant held that the disclosure of particulars of assets of himself and his wife in the accounts submitted to the applicant were unconstitutional acts. However, in order to discover the intention of the submitter of account as to whether or not there was an intention, an examination must be conducted on the details in the evidence in order to discover such a fact. From the evidence and statement of the respondent, and from the examination of the evidence and statement of the respondent, the applicant held that the respondent intentionally submitted accounts and supporting documents which contained false statements or concealed facts which should have been disclosed. The applicant resolved accordingly by 8 votes to 1 vote as well as referred the matter to the Constitutional Court for consideration under section 295 of the Constitution.

2. Preliminary issue

Was the case in accordance with section 295 of the Constitution ?

The Constitutional Court held that the case was in accordance with section 295 of the Constitution and therefore the application was accepted for consideration.

3. The issues considered by the Constitutional Court

The first issue considered was whether or not the respondent was under a duty to submit such accounts showing particulars of assets and liabilities of himself, his spouse and children who have not yet become *sui juris* and supporting documents to the NCCC under section 291 and section 292 of the Constitution and whether or not the applicant's application was in accordance with section 295 of the Constitution.

The Constitutional Court held as follows. Section 317 paragraph one of the Constitution provided that the Council of Ministers carrying out the administration of the State affairs on the date of the promulgation of this Constitution should be the Council of Ministers under this Constitution. The Constitutional Court also held in Ruling Nos. 10/2543 and 27/2543 which, in brief, stated that the date of promulgation of the Constitution, i.e. 11th October B.E. 2540 (1997) should be deemed as the commencement date of office. As the respondent held a political position under section 291 paragraph one subparagraph (2) of the Constitution and section 291 of the Constitution provided that a person holding a political position must

submit an account, the respondent was therefore under a duty to submit an account to the applicant within the time limit in section 292 of the Constitution.

The Constitutional Court had considered the meaning of “intentionally” in section 295 of the Constitution in Ruling Nos. 31/2543 and 19/2544. In summary, “intentionally” referred to only a direct intention. In other words, whether or not the respondent knew of the existence of such assets and liabilities, it was sufficient that the respondent was aware of his acts. It was not necessary for the respondent to have a special intention directed towards unlawful interests or towards the exercise of powers in such manner as to acquire unlawful interests or to conceal assets which had been obtained through an abuse of powers. However, even though the word “intentionally” did not require a special intention as earlier defined, the use of the word “intentionally” immediately before the phrase “submit an account which contained false statements or concealed facts which should have been disclosed” indicated that the Constitution stressed that the submitter of an account should have been clearly aware and there must be clear evidence or absence of any reasonable doubt. In the case where evidence was still not clear or still under suspicion, a ruling should not be made to the detriment of the alleged.

In this case of the respondent, it could be accepted that the respondent had from the year B.E. 2535 (1992) nominally transferred the shares of various companies to his spouse. Such transfers were made prior to the conduct of any political activity. The evidence which revealed the direct transfer of shares from the respondent to other people were a result of the nominal transfer of shares to his spouse who subsequently made nominal transfers to those persons in whose names they were held in lieu of the spouse. Evidence on the register therefore revealed that those persons received a direct transfer of the shares from the respondent. In actual fact, the appearance of the names of those persons on the shares of various companies referred to the holding of shares on behalf of the respondent’s spouse, and not for the respondent.

The second issue considered was whether or not at the time of submission of accounts, the respondent knew that his spouse had shares which were in the names of others holding the shares on her behalf but not included in the account.

Section 295 of the Constitution was a severe political sanction for holders of political positions who intentionally failed to submit an account, intentionally submitted a false account or concealed facts which should have been disclosed. A ruling made detrimental to the respondent should therefore be made only after a strict consideration of the evidence. The respondent should know clearly of the existence of assets, and not just know of their existence. This was because the respondent must have had an intention to disclose the particular of assets inconsistent with the truth or clearly knew the extent of his property and had an intention to not disclose the particulars of assets and liabilities or disclose an incomplete account. Such requirements were needed to prove a violation in the case of submitting an account containing false statements or concealing facts which should have been disclosed.

It was held that the application did not present any evidence that clearly indicated that at the time of submission of an account, the respondent knew that there were still assets which were his spouse's shares held by others on her behalf. The applicant only considered that the respondent should have known or must have known the acts of his spouse, including the assets which were shares normally dealt with by the spouse. The respondent raised a defence that the respondent did not know that there were still shares which the spouse used other persons' names at the time of the submission of account and that the personal assistant of the spouse misunderstood that there was no requirement to disclose shares in the names of others holding the shares on her behalf because the account form did not so indicate. The personal assistant of the respondent had not been notified of the actual requirements and therefore included the particulars of other assets of the respondent's spouse, and his children who had not yet become sui juris without including the particulars of shares held by other people on their behalf. When it appeared that the particulars of assets in the form of his spouse's shares held by others on her behalf had not been disclosed, the respondent collected the particulars of such assets and made an additional submission to the applicant, especially assets in the form of such shares. From that evidence, it could be inferred that they were assets of the respondent's spouse only. The respondent's spouse herself testified to the sub-committee for investigation that she was not aware that her personal assistant had not disclosed such shares in the accounts. If she had examined, she should have known and made the disclosure. Therefore, it could be seen that even the respondent's spouse, who was the owner of such shares, did not know. Therefore, how could it be concluded that the respondent knew of the non-disclosure of such shares in the accounts? Hence, it was credible that the respondent must have not known that at the time of submission of accounts on the 3 occasions, there were shares in the names of others holding on his spouse's behalf which were not shown in the accounts. The respondent's defence therefore carried enough weight. The Constitutional Court considered that the evidence referred to by the applicant and that had been investigated was insufficient for an inference that the respondent intentionally submitted accounts which contained false statements or concealed facts which should have been disclosed. The respondent therefore did not commit a prohibited act under section 295 of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that Police Lieutenant Colonel Thaksin Shinawatra, the respondent, did not commit a prohibited act under section 295 of the Constitution. The application was therefore dismissed.
