

Summary of the Constitutional Court Ruling No. 12/2546

Dated 22nd April B.E. 2546 (2003)*

**Re : The Palang Dhamma Party Leader requested for a ruling on an order
of the Political Party Registrar.**

.....

1. Background and summarized facts

The Palang Dhamma Party Leader submitted an application, dated 3rd September B.E. 2544 (2001), to the Constitutional Court for a ruling on an order of the Political Party Registrar, pursuant to section 33 in conjunction with section 17 of the Organic Act on Political Parties, B.E. 2541 (1998), in the case where the Political Party Registrar notified the denial of acceptance of changes in the Palang Dhamma Executive Committee.

The facts from the Palang Dhamma Party Leader's application and the statement of the Political Party Registrar, along with supplemental documents, could be summarized as follows. Palang Dhamma Party held an Annual General Assembly Meeting for B.E. 2544 (2001) on 28th April B.E. 2544 (2001). There were 93 attendees out of a total number of 229 Assembly Members. Thus, a quorum was not constituted pursuant to article 36 paragraph one of the Bylaws of Palang Dhamma Party which stated that an Annual General Assembly Meeting must be attended by not less than half the total number of existing Assembly Members in order to constitute a quorum. As a result, the Chairman of the meeting, who was vested with the power to call a meeting, announced through loudspeakers that he would apply article 36 paragraph two of the Bylaws of Palang Dhamma Party to call a meeting. The Party's Assembly Members were duly notified to attend the Annual General Assembly Meeting for the B.E. 2544 (2001) on 29th April B.E. 2544 (2001) at 9.00 am at the same venue and with the same agenda. At such meeting, there were 54 attendees. A quorum was deemed as constituted under article 36 paragraph two of the Party Rules. The meeting proceeded and resolutions were passed on various matters including the selection of certain positions in the Party's executive committee. Thereafter, the Palang Dhamma Party Leader sent a letter, dated 28th May B.E. 2544 (2001), to the Political Party Registrar notifying the latter of changes in the Party Executive Committee, in compliance with the Organic Act on Political Parties, B.E. 2541 (1998). Another letter, dated 13th July B.E. 2544 (2001), was sent to the Political Party Registrar in order to clarify the calling of Palang Dhamma's Annual General Assembly Meeting on 29th April B.E. 2544 (2001).

* Published in the Government Gazette, Vol. 121 , Part 3a , dated 8th January B.E. 2547 (2004)

The Political Party Registrar sent a letter, dated 1st August B.E. 2544 (2001), to the Palang Dhamma Party leader, stating that the matter had been considered and a decision reached to not accept the changes in the Palang Dhamma Party Executive Committee pursuant to section 33 of the Organic Act on Political Parties, B.E. 2541 (2001), because in calling the second general meeting, members had not been notified in advance. Hence, article 35 and article 36 of the Bylaws of Palang Dhamma Party were not complied with. Subsequently, the Political Party Registrar sent another letter, dated 29th August B.E. 2544 (2001), to the Palang Dhamma Party Leader informing that the statement made by Palang Dhamma Party did not contain reasons to refute the Political Party's findings that notices or invitations had not been made under article 33 of the Bylaws of Palang Dhamma Party for the second Annual General Assembly Meeting for B.E. 2544 (2001), which was in breach of article 35 of the Palang Dhamma Party Rules.

The Palang Dhamma Party Leader had sent a letter, dated 24th August B.E. 2544 (2001), to the Political Party Registrar, requesting for a review of the notice of changes to Palang Dhamma Party Executive Committee pursuant to the findings of the Political Parties Judicial Committee. However, as a reply from the Political Party Registrar had not yet been received, the Palang Dhamma Party Leader submitted an application, dated 3rd September B.E. 2544 (2001) to the Constitutional Court pursuant to section 33 in conjunction with section 17 of the Organic Act on Political Parties, B.E. 2541 (1998) requesting that (1) an order be issued to determine that the Palang Dhamma Party Annual General Assembly Meeting was an Annual General Assembly Meeting under article 35 and article 36 of the Bylaws of Palang Dhamma Party; (2) the Political Party Registrar revoked the order in the letter dated 1st August B.E. 2544 (2001); and (3) the Political Party Registrar accepted the changes in Palang Dhamma Party Executive Committee as provided by law.

The Political Party Registrar submitted a statement in reply on 19th September B.E. 2544 (2001) and requested for a Constitutional Court ruling that (1) Palang Dhamma Party's application to the Constitutional Court for an order to compel the Political Party Registrar to accept the changes in the Palang Dhamma Party Executive Committee in accordance with the resolution of the Annual General Assembly Meeting for the year B.E. 2544 (2001) pursuant to the resolution of the Party Executive Committee upon the advice of the Party Judicial Committee was inadmissible because the Registrar had already reached a final decision; (2) the determination of non-acceptance of the changes in the Palang Dhamma Party Executive Committee was already in accordance with the law; and (3) Palang Dhamma Party's application be dismissed.

2. Preliminary issue

Did the Constitutional Court have the power to accept this application for consideration ?

The Constitutional Court held as follows. According to the facts, Palang Dhamma Party Leader sent a letter to the Political Party Registrar notifying the latter of changes in the

Palang Dhamma Party Executive Committee, which contained details on the names, occupations, addresses and signatures of the Party's Executive Committee members in accordance with section 13 paragraph two subparagraph (5) of the Organic Act on Political Parties, B.E. 2541 (1998). The case was consistent with section 33 paragraph one. When the Political Party Registrar notified the denial of acceptance of changes in the Palang Dhamma Party Executive Committee, the case was in accordance with section 33 paragraph two, which stipulated the *mutatis mutandis* application of section 17. Palang Dhamma Party Leader therefore had the right to submit an application to the Constitutional Court in request of a ruling on the order of the Political Party Registrar under section 33 in conjunction with section 17 of the Organic Act on Political Parties, B.E. 2541 (1998). Hence, the Constitutional Court had the power to accept the application for consideration under such provisions of law.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the second Annual General Assembly Meeting for the year B.E. 2544 (2001) of Palang Dhamma Party held on 29th April B.E. 2544 (2001) was in accordance with article 35 and article 36 of the Bylaws of Palang Dhamma Party, B.E. 2541 (1998) (as amended) (Amendment No. 3, B.E. 2543 (2000)).

The Constitutional Court held as follows. The notice of a new meeting on 29th April B.E. 2544 (2001) given by the chairman to the meeting through a loudspeaker was a notice given to only the 93 Party Assembly Members who attended the meeting on 28th April B.E. 2544 (2001). There did not appear to be any sort of notice given to the other 136 Party Assembly Members who did not attend the meeting. Thus, the case was considered under section 168 of the Civil and Commercial Code, which stated that “the expression of an intent directly to a recipient in person shall be deemed as being effective as from the acknowledgement of such expression of intent by the recipient; the application of this provision shall extend to the expression of an intent by a person to another person by telephone or other communication devices or by other means which enables a similar form of communication”, and section 169, which stated that “the expression of an intent to a recipient not in person shall be deemed as being effective as from the time when such expression of intent reaches the recipient...” Moreover, the intentions behind holding a Political Party Annual General Assembly Meeting was to notify the Party members and enable them to vote on important matters of such political party. Therefore, all Party Assembly Members should be duly notified under article 35 of the Party Rules.

Hence, the oral notification of a new meeting given by the chairman to the 93 Palang Dhamma Party Assembly Members present at the meeting, without a notification to the other 136 Party Assembly Members, could not be deemed as an advance notice to all Party Assembly Members. As a result, the second Palang Dhamma Annual General Assembly Meeting for B.E. 2544 (2001) held on 29th April B.E. 2544 (2001) was not compliant with

article 35 and article 36 of the Bylaws of Palang Dhamma Party, B.E. 2541 (1998) (as amended) (Amendment No. 3, B.E. 2543 (2000)). The notification of non-acceptance of changes in the Palang Dhamma Party Executive Committee by the Political Party Registrar was therefore in accordance with section 33 of the Organic Act on Political Parties, B.E. 2541 (1998).

4. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held unanimously that the Palang Dhamma Party Leader's application be dismissed.
