

Summary of the Constitutional Court Ruling No. 29/2546

Dated 5th August B.E. 2546 (2003)*

Re : The National Counter Corruption Commission requests 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. Pichet Satirachawal intentionally submitted false accounts showing particulars of assets and liabilities and supporting documents or concealed facts which should have been disclosed.

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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 of the Kingdom of Thailand, B.E. 2540 (1997). The application could be summarized as follows.

Mr. Pichet Satirachawal (the respondent) had submitted accounts showing particulars of assets and liabilities to the NCCC on nine occasions, as follows:

The first submission was made on 6th November B.E. 2540 (1997) in the case of taking office as a member of the House of Representatives.

The second submission was made on 6th May B.E. 2541 (1998) in the case of taking and leaving office as Assistant-Secretary to the Minister of Interior.

The third submission was made on 30th November B.E. 2541 (1998) in the case of the expiration of one year after leaving office as Assistant-Secretary to the Minister of Interior.

The fourth submission was made on 26th July B.E. 2543 (2000) in the case of leaving office as member of the House of Representatives.

The fifth submission was made on 22nd February B.E. 2544 (2001) in the case of taking office as a party-list member of the House of Representatives.

The sixth submission was made on 14th March B.E. 2544 (2001) in the case of taking office as Deputy-Minister of Industry.

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The seventh submission was made on 14th March B.E. 2544 (2001) in the case of leaving office as party-list member of the House of Representatives.

The eighth submission was made on 24th July B.E. 2544 (2001) in the case of the expiration of one year after leaving office as member of the House of Representatives.

The ninth submission was made on 15th March B.E. 2545 (2002) in the case of the expiration of one year after leaving office as party-list member of the House of Representatives.

The Office of the National Counter Corruption Commission (Office of the NCCC) discovered from its investigations that Mr. Pichet Satirachawal was liable as a joint debtor with New Network Company Limited and three other defendants under a court judgment for the debt of 48,987,128.24 baht together with interests to Credit Agricole Indosuez Bank, the plaintiff. The Court of First Instance (the Civil Court) gave judgment for such case on 16th April B.E. 2536 (1993). The Court of Appeal gave judgment on 12th July B.E. 2537 (1994) and the Supreme Court gave judgment on 7th May B.E. 2539 (1996). However, because Mr. Pichet Satirachawal failed to repay the debts within the schedule determined by the court, Indosuez Bank lead an execution officer to seize Mr. Pichet Satirachawal's assets on 9th October B.E. 2542 (1999), comprising of four parcels of land together with structures thereon. Thereafter, on 14th October B.E. 2542 (1999), Mrs. Suri Satirachawal, wife of the respondent, filed an application to the Civil Court to withdraw the seizure of two parcels of land and an apportionment of the sums obtained from the sale of the two other parcels of land.

The NCCC (applicant) determined in its meeting no. 68/2545 on 29th August B.E. 2545 (2002) that from the examination of the accounts showing particulars of assets and liabilities together with supporting documents submitted by the respondent on 9 occasions, the respondent failed to disclose liabilities in the amount of Baht 48,987,128.24, for which the respondent was joint debtors with four other persons under the judgment of the Supreme Court No. 663/2539 on 7th May B.E. 2539 (1996). Subsequent to judgment being given by the Supreme Court, an execution officer seized the respondent's assets and the respondent's wife applied for a withdrawal of seizure and an apportionment of the seized assets. This showed that the respondent knew of such debts since 7th May B.E. 2539 (1996), prior to the first submission of accounts of assets and liabilities on 6th November B.E. 2540 (1997), and the knowledge of such debts had persisted throughout. The respondent explained that such debts had not been disclosed because of the impact which it might have in his case in court. This, however, amounted to an admission of an intent to conceal such debt liability. The respondent's explanation was unreasonable because the Supreme Court had reached a final judgment that the respondent was certainly liable as a joint debtor, from whom the creditor may claim the debt amount either in whole or in part. The legal proceedings at such court level only involved the issue of ownership of properties subject to execution, not the substantial issue of the case which had already been ruled conclusively. Hence, it did not constitute acceptable grounds for concealing such facts. As a result, the NCCC reached a

unanimous resolution of 9 votes that the respondent intentionally submitted false accounts showing particulars of assets and liabilities and supporting documents to the applicant in the cases of taking, leaving office and the expiration of one year after leaving office on 9 occasions, as the case may be, or concealed facts which should have been disclosed. The matter was therefore referred to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The Constitutional Court held that the case was in accordance with section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and therefore accepted the application for consideration. However, there were two preliminary issues raised as objections by the respondent which required ruling.

(1) The first preliminary issue was whether or not the application was sweeping.

The Constitutional Court held that the application had described the cause of action as well as the relevant facts or circumstances, specified the relevant sections of the Constitution for the cause of action, accompanied by an application to enforce a certain course of action and contained supporting reasons. The application was therefore in accordance with clause 5 of the Rules of the Constitutional Court on Constitutional Court Procedures, B.E. 2541 (1998). The applicant had stated the application with exacting clarity, which was not in any manner sweeping.

(2) The second preliminary issue was whether or not the liabilities of a guarantor as of the respondent in this case were within the definition of liabilities according to the objects and purpose of the Constitution.

The Constitutional Court held the following opinion. The word “liability” was stated in the Constitution in Chapter 10 Inspection of the Exercise of State Power, Part 1 Declaration of Accounts Showing Particulars of Assets and Liabilities, from section 291 to section 296. The disclosure of accounts of assets and liabilities was therefore part of the inspection of the exercise of State powers. Political position holders were under a duty to submit such accounts, which would subsequently be applied as the basis for the inspection of assets and liabilities. The facts found indicated that the respondent was a guarantor of New Network Company Limited, which was sued by Indosuez Bank in the Civil Court, who gave judgment that the respondent be jointly liable with other defendants for the debt of 48,987,128.24 baht together with interests. Subsequently, the Court of Appeal and the Supreme Court gave judgment that the respondent, in his capacity as guarantor, be jointly liable with New Network Company Limited to Indosuez Bank for such debt, which was a fixed sum pursuant to a final Supreme Court judgment. Such a final judgment debt was within the definition of “liability” in the Constitution.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the respondent intentionally submitted false accounts showing particulars of assets and liabilities and supporting documents or concealed facts which should have been disclosed under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The first point considered was whether or not the respondent was obliged to disclose the debt in the amount 48,987,128.24 baht in the account of assets and liabilities submitted to the applicant under section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). On this point, the Constitutional Court held that the Supreme Court had given a final judgment on the respondent's liability as joint debtor to Indosuez Bank for the sum of 48,987,128.24 baht. Such a judgment debt was therefore a definite debt which the respondent had to include in the account of assets and liabilities submitted to the applicant according to the Constitution.

The next point considered was whether or not the respondent was aware of the final judgment debt in the amount of 48,987,128.24 baht. On this point, the Constitutional Court held the following opinion. The Supreme Court gave judgment for the case on 7th May B.E. 2539 (1996) and the execution officer had proceeded to seize the respondent's property on 9th October B.E. 2539 (1996) because of the respondent's failure to repay the debt. In this connection, the respondent's spouse applied for a withdrawal of the seizure and an apportionment of the four land parcels. From those events occurring prior to the respondent's first submission of account of assets and liabilities on 6th November B.E. 2540 (1997), there was reasonable cause to believe that the respondent was aware of the debt in the amount of 48,987,128.24 baht thru the date of account submission.

The respondent was a political position holder under section 291 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), who submitted an account showing particulars of assets and liabilities for himself, his spouse and children who had not yet become *sui juris* to the applicant in the cases of taking office, leaving office and the expiration of one year after leaving office on a total of nine occasions. The first submission was made on 6th November B.E. 2540 (1997) and the final submission was made on 15th March B.E. 2545 (2002). However, in none of the submissions did the respondent include the debt to Indosuez Bank in the amount of 48,987,128.24 baht despite such debt being a definite liability of a fixed sum of money which had been specified by the Court of First Instance, the Court of Appeal and the Supreme Court. Such debt was by no means a forecast of future debts. The respondent was aware of the debt prior to the first submission of account. Therefore, such debt under the Supreme Court judgment was clear and indisputable evidence that the respondent intentionally submitted false accounts showing particulars of assets and liabilities and supporting documents or concealed facts which should have been disclosed.

4. Ruling of the Constitutional Court

The Constitutional Court held, by a majority vote of 8 Constitutional Court judges, that the respondent intentionally submitted false accounts showing particulars of assets and liabilities and supporting documents or concealed facts which should have been disclosed under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). A minority of 5 Constitutional Court judges held that the respondent did not intentionally submit false accounts showing particulars of assets and liabilities and supporting documents or conceal facts which should have been disclosed under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As a result of the above ruling, the Constitutional Court had to determine the commencement date of the prohibition from holding any political position which would be imposed on the respondent. On this issue, the Constitutional Court held the following opinion. According to the application, the respondent made a total of nine submissions of accounts to the applicant pursuant to various political positions held and the applicant reached a resolution on 29th August B.E. 2545 (2002) that the respondent intentionally submitted false accounts showing particulars of assets and liabilities and supporting documents to the applicant or concealed facts which should have been disclosed on all nine occasions. In the period between the applicant's resolution, the submission of application to the Constitutional Court and the Constitutional Court ruling, the respondent remained in office as a political official. Thus, the respondent was prohibited from holding a political position for a period of five years as from the discovery of such contravening acts, i.e. 29th August B.E. 2545 (2002).

The Constitutional Court therefore ruled by a majority vote that Mr. Pichet Satirachawal, the respondent, intentionally submitted false accounts showing particulars of assets and liabilities and supporting documents or concealed facts which should have been disclosed under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and was prohibited from holding a political position for a period of five years commencing from the date of discovery of the contravening acts by the NCCC, the applicant, i.e. as from 29th August B.E. 2545 (2002).
