

Summary of Constitutional Court Ruling

No. 27/2547

Dated 29th January B.E. 2547 (2004)*

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. Sarintra Sa-i-dee intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents.

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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), in the case where Mr. Sarintra Sa-i-dee intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents. The facts under the application can be summarized as follows.

Mr. Sarintra Sa-i-dee, the respondent, held the position of member of Yala Provincial Administrative Organisation from 5th February B.E. 2543 (2000). The respondent was therefore a holder of a political position under section 291 paragraph one subparagraph (6) of the Constitution and section 32 of the Organic Act on Counter Corruption, B.E. 2542 (1999). In addition, the Notification of the National Counter Corruption Commission Re: Prescription of Revenue Criteria for Local Administrative Organisations in order to Ascribe Holder of Political Statuses to Local Administrators and Members of Local Councils of Local Administrative Organisations, dated 30th December B.E. 2542 (1999), as amended by the Notification of the National Counter Corruption Commission Re: Prescription of Revenue Criteria for Local Administrative Organisations in order to Ascribe Holder of Political Statuses to Local Administrators and Members of Local Councils of Local Administrative Organisations (No. 2), B.E. 2543 (2000), dated 19th October B.E. 2543 (2000), prescribed a revenue criteria for local administrative organizations, and members of local councils having incomes pursuant to such Notification were under a duty to submit accounts showing particulars of assets and liabilities for oneself, one's spouse and children who had not yet become *sui juris* to the National Counter Corruption Commission on each occasion of taking office, vacating office and the expiration of one year after the vacation of office. Investigations revealed that in the fiscal year B.E. 2542 (1999), Yala Provincial

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Administrative Organisation had a total revenue of 135,050,024.65 baht, which fell within the criteria under such Notification. The administrators and members of the Council of Yala Provincial Administrative Organisation were therefore under a duty to submit accounts within thirty days as from 5th February B.E. 2543 (2000).

The applicant discovered from investigations that the respondent had not submitted an account showing particulars of assets and liabilities for himself, his spouse and children who had not become *sui juris* to the applicant within thirty days of taking office. The applicant therefore issued a total of four letters of notification to the respondent in order to seek a factual explanation. The first letter was sent by registered mail with receipt confirmation to the Yala Provincial Administrative Organisation while the other three letters were sent by mail with receipt confirmation to Mr. Sarintra Sa-i-dee, the respondent, at his domicile address evidenced by records of the Bureau of Administration Registration, Ministry of Interior. The postal delivery receipts indicated that the letters were received by another person on his behalf.

Moreover, the applicant engaged NCCC officials to gather additional evidence comprising of a total of four items of documentary evidence, the transcript of statement given by the accused (the respondent) and the transcript of statements given by a total of eleven witnesses to the NCCC officials. In addition, the respondent and witnesses gave statements to the NCCC officials at the interrogation stage.

The applicant convened a meeting to consider the matter in meeting no. 56/2546 on 7th August B.E. 2546 (2003) and reached a unanimous resolution that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents. The applicant therefore referred the matter to the Constitutional Court for a ruling under section 295 of the Constitution on the following issues:

- 1) that Mr. Sarintra Sa-i-dee, the respondent, intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents on the occasion of taking office;
- 2) that Mr. Sarintra Sa-i-dee, the respondent, be dismissed from office as from the expiration of the date due for submission of account as well as impose a prohibition from holding any political position for a period of five years as from the date of vacating office.

2. The issue considered by the Constitutional Court

The Constitutional Court examined the application, which was then accepted for consideration under section 295 of the Constitution. The issue which had to be ruled by the Constitutional Court was whether or not the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents on the occasion of taking office under section 295 of the Constitution.

The Constitutional Court held as follows. The respondent was under a duty to submit an account showing particulars of assets and liabilities but failed to make such a submission to the applicant within the prescribed time limit without giving reasons to the applicant.

As a result, the applicant issued a total of four letters of notification to the Yala Provincial Administrative Organization and the respondent in order to obtain a statement of facts. Despite that, the respondent still did not submit an account or give any facts or reasons. The respondent argued that the reason for not submitting an account was because he had mistakenly understood and misunderstood that the revenues of Yala Provincial Administrative Organisation did not reach the criteria prescribed under the Notification of the NCCC, namely one hundred million baht. Nevertheless, it could be accepted from the evidence presented by the applicant that the respondent had known that the Yala Provincial Administrative Organization had revenues which exceeded one hundred million baht in the year B.E. 2542 (1999). Therefore, the respondent had to submit an account showing particulars of assets and liabilities to the applicant within the time limit prescribed by law. The respondent failed to do so in this case. The respondent's arguments that he misunderstood that Yala Provincial Administrative Organisation's revenues did not exceed one hundred million baht; that he did not read the contents of the letters from the Yala Provincial Administrative Organisation in detail; as for the letter received from the applicant's office, he understood that they were general warnings issued to all those who had not submitted accounts showing particulars of assets and liabilities without specifically being directed to the respondent; and that he was experiencing problems concerning residence and debts and therefore did not take an interest in acquiring further information were all defences which lacked credibility.

A further issue which had to be ruled by the Constitutional Court was the starting date for the five-year period which the respondent would be prohibited from holding any political position.

The Constitutional Court had already decided on this issue in Ruling No. 10/2544, dated 3rd August B.E. 2544 (2001), that the vacation of office of a political position holder under section 295 paragraph one of the Constitution where the political position holder was still in office at the time of the Constitutional Court ruling would take effect as from the expiration date of the period for submission under section 292 or as from the date at which the applicant discovered such act, as the case may be. There would also be a prohibition from holding any political position for a period of five years as from the expiration of the period for submission or date of discovery of such act by the applicant. As the respondent was still in office, it was therefore held that he should vacate office as from 5th March B.E. 2543 (2000).

3. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held that Mr. Sarintra Sa-i-dee, the respondent, intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents in the case of taking office under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and was prohibited from holding any political position for a period of five years as from 5th March B.E. 2543 (2000).
