

Summary of Constitutional Court Ruling

No. 36/2547

Dated 21st March B.E. 2547 (2004)*

Re: The National Counter Corruption Commission requested the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in a case relating to the powers and duties of organs under the Constitution.

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1. Background and summarized facts

The National Counter Corruption Commission (NCCC) submitted an application, dated 2nd December B.E. 2546 (2003), requesting the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in relation to the powers and duties of the NCCC in the conduct of an inquiry pursuant to a petition to remove four Constitutional Court judges referred to it by the President of the Senate under section 305 of the Constitution in conjunction with section 63 of the Organic Act on Counter Corruption, B.E. 2542 (1999), and also in relation to the powers and duties of the NCCC and the President of the Senate in the verification that signors in the petition had not lost their rights under section 68 paragraph two of the Constitution, whereby such persons would have lost their rights to sign a petition to the Senate to pass a resolution to remove persons under the organic law on counter corruption in conjunction with section 23 paragraph one subparagraph (7) of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), as amended by the Organic Act on Election of Members of the House of Representatives and Senators (No. 2), B.E. 2542 (1999).

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court could accept this application for consideration under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the NCCC was a constitutional organ and had powers and duties under section 305 of the Constitution. Therefore, when a problem arose as to such constitutional powers and duties of the NCCC, and the NCCC, an organ under the Constitution, submitted an application to the Constitutional Court for a ruling under

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section 266 of the Constitution, the Constitutional Court could accept this application for ruling under section 266 of the Constitution.

3. The issues considered by the Constitutional Court

The issues which had to be considered by the Constitutional Court were legal issues pertaining to the powers and duties of the NCCC in verifying that the signors of a removal petition were eligible to vote, and had not lost their right to sign a removal petition. It was deemed appropriate to consider the matter in three separate issues as follows.

On the first issue, the question raised was whether the NCCC or the President of the Senate had the duty to verify that the people who signed the petition to remove four Constitutional Court judges from office were eligible voters, and not those who had lost their rights under section 68 paragraph two of the Constitution and thereby losing their rights to sign a petition to the Senate to pass a resolution to remove persons under the organic law on counter corruption, pursuant to section 23 paragraph one subparagraph (7) of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), as amended by the Organic Act on Election of Members of the House of Representatives and Senators (No. 2), B.E. 2542 (1999).

The Constitutional Court held that a removal petition could initiate an NCCC inquiry proceedings under section 305 of the Constitution only after it had been scrutinized by the President of the Senate for accuracy and completeness under section 304 of the Constitution and section 60 and section 61 of the Organic Act on Counter Corruption, B.E. 2542 (1999). Such requirements were in accordance with section 304 of the Constitution in conjunction with section 63 of the Organic Act on Counter Corruption, B.E. 2542 (1999), which provided that it was the duty of the President of the Senate to scrutinize petitions since the accuracy and completeness of such a petition formed a prerequisite for petitions that could be considered and processed by the President of the Senate. Therefore, the President of the Senate was under a duty to verify that the signors of the removal petition were eligible voters and not those who had lost their rights under section 68 paragraph two of the Constitution thereby losing the right to sign a petition to the Senate for a resolution to remove a person from office under the organic law on counter corruption in conjunction with section 23 paragraph one subparagraph (7) of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1999), as amended by the Organic Act on Election of Members of the House of Representatives and Senators (No. 2), B.E. 2542 (1999). In addition, the President of the Senate had to determine whether or not such eligible votes constituted the requisite 50,000 petitioners required under section 304 of the Constitution before submitting such petition to the NCCC for further inquiry proceedings under section 305 of the Constitution.

On the second issue, the question was whether or not the removal petition which was sent by the President of the Senate to the NCCC for conducting a factual inquiry under section 305 of the Constitution in conjunction with section 63 of the Organic Act on Counter

Corruption, B.E. 2542 (1999), was a complete and lawful petition that the NCCC could proceed with the factual inquiry. Otherwise, did the NCCC have to examine whether or not the signors of the removal petition were disentitled under section 68 paragraph two of the Constitution thereby losing their right to sign a petition to the Senate for a resolution to remove a person under the organic law on counter corruption, pursuant to section 23 paragraph one subparagraph (7) of the Organic Act on Election of Members of the House of Representatives and Senators, B.E. 2541 (1998), as amended by the Organic Act on Election of Members of the House of Representatives and Senators (No. 2), B.E. 2542 (1999), prior to the factual inquiry?

The Constitutional Court held as follows. It was held under the first issue that a removal petition could only initiate an inquiry by the NCCC under section 305 of the Constitution if it passed the scrutiny of the President of the Senate to ensure that the petition was lawful and complete under section 304 of the Constitution and section 60 and section 61 of the Organic Act on Counter Corruption, B.E. 2542 (1999). Therefore, under the facts of this application, since the President of the Senate had referred a removal petition to the NCCC for an inquiry under section 305 of the Constitution, and the President of the Senate also subsequently confirmed that he had scrutinized the petition for lawfulness and completeness after a letter of enquiry from the NCCC, the NCCC was obliged to conduct an inquiry under section 305 of the Constitution. Such inquiry had to be followed by a report to be presented to the Senate, clearly specifying whether or not and to what extent each of the allegations in the application contained substance together with the relevant reasons. If the NCCC resolved that an allegation contained substance, the holder of such office would have to cease the performance of duties as of that date until such time when a resolution of the Senate was passed. In this regard, a resolution of the NCCC affected the performance of duties by the person subject to the removal petition. Thus, when such person subject to the removal petition, who was affected directly by the conduct of an inquiry by the NCCC, sent an objection letter to the NCCC, while the inquiry was still pending, that the number of eligible signors in the removal petition failed to reach the requisite number, claiming that there were also ineligible persons who signed the petition, such objection was related to the lawfulness of the petition in the proceedings of the NCCC. The NCCC therefore had the duty to examine the lawfulness and completeness of the petition in relation to the eligibility of the signors, i.e. whether they were eligible voters who had not lost the right to sign a petition, constituting the requisite number required by section 304 of the Constitution and section 60 of the Organic Act on Counter Corruption, B.E. 2542 (1999), before continuing its inquiry proceedings.

On the third issue, in the event that the examination of the signors of the removal petition revealed the fact that there were also signatures of disentitled people in the petition, rendering the number of people signing the removal petition who were eligible voters under the organic law on election of members of the House of Representatives and senators and who had not lost their rights less than 50,000, the question raised was whether or not the removal petition could be deemed as a lawful and complete petition under the

Constitution and the Organic Act on Counter Corruption, B.E. 2542 (1999) on which the NCCC could conduct further inquiry proceedings.

The Constitutional Court held that after ruling on the first and second issues, it was not necessary to rule on this issue.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that the President of the Senate was obliged to scrutinize the signors of the petition to remove four Constitutional Court judges to ensure that they were eligible voters who had not lost their rights under section 68 paragraph two of the Constitution, i.e. persons who had lost the right to sign a petition to the Senate for a resolution to remove persons under the organic law on counter corruption. In this regard, the President of the Senate had to ensure that the requisite number of 50,000 of such eligible persons was met pursuant to section 304 of the Constitution before referring such a petition to the NCCC for further proceedings under section 305 of the Constitution. Thereafter, the NCCC could conduct a factual inquiry only on those petitions that was lawful and complete under section 304 of the Constitution and section 63 of the Organic Act on Counter Corruption, B.E. 2542 (1999). Therefore, as the facts under the application indicated that there was an objection on the adequacy of the number of signors in the removal petition during the inquiry stage of the NCCC, the NCCC could continue its inquiry only after it had resolve the objections raised on the lawfulness and completeness of the petition.
