

Summary of Constitutional Court Ruling

No. 47/2547

Dated 6th July B.E. 2547 (2004)*

Re: The President of the National Assembly requested the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case of the use of powers by the State Audit Commission and the Senate in the process of selecting the State Audit Governor.

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1. Background and summarized facts

Police Colonel Surapong Phainual, a senator, and others submitted a letter to the President of the National Assembly requesting that an application and an opinion be submitted to the Constitutional Court for a ruling in the case of the use of powers by the State Audit Commission and the Senate in the selection of a person to fill in the position of State Audit Governor.

The President of the National Assembly was of the opinion that under section 333 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), section 15, section 30, section 31 and section 33 of the Organic Act on State Audit, B.E. 2542 (1999), in conjunction with article 6(5) of the Rules of the State Audit Commission on Rules and Procedures for the Selection and Nomination of Suitable Candidates for the Position of State Audit Governor, B.E. 2543 (2000), the State Audit Commission had the power and duty of selecting suitable candidates for the position of State Audit Governor and nominate the names of those persons to the Senate for approval. In this regard, the Senate's powers were limited to the conferment of an approval or disapproval. If the Senate did not give its approval, the State Audit Commission would again be under a duty to carry out the selection of suitable persons for the position of State Audit Governor and make nominations to the Senate until an approval was granted. Therefore, in this case where the State Audit Commission nominated 3 candidates for the position of State Audit Governor to the Senate, the Senate's resolution to select one of the three suitable candidates for the position of State Audit Governor was likely to be an unconstitutional exercise of duties and unlawful under the Organic Act on State Audit, B.E. 2542 (1999). In consequence thereof, the President of the National Assembly relied on his powers under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in submitting the matter together with an opinion to the Constitutional Court for a ruling on whether or not in this case the proceedings whereby the State Audit Commission nominated 3 suitable candidates for the position of State Audit Governor and the Senate passed a resolution to select 1 State Audit Governor from the 3 nominees presented by the State Audit Commission was constitutional.

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2. Preliminary issue

Could the Constitutional Court accept the application from the President of the National Assembly for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held as follows. The State Audit Commission and the Senate were both organs established and whose powers and duties were provided for by the Constitution. It followed that they were organs under the Constitution. Section 312 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), stated that the King should appoint the State Audit Governor upon the advice of the Senate whereas the selection and election of the State Audit Governor should be in accordance with the organic law on state audit. Section 333(1) provided that the organic law on state audit should provide the powers and duties of the State Audit Commission, inter alia, on the selection of a person suitable to be the State Audit Governor. The exercise of powers and duties of the State Audit Commission in the selection of suitable candidates for the position of State Audit Governor was therefore an exercise of constitutional powers and duties. Similarly, the exercise of Senate powers and duties in approving the nominations made by the State Audit Commission was an exercise of powers under the Constitution in giving advice to the King, which was also an exercise of constitutional powers.

In accordance with the above, when the President of the National Assembly, who is the person entitled to submit a matter together with an opinion to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), considered that the selection of suitable candidates for the position of State Audit Governor by the State Audit Commission and the Senate was an exercise of duty which was unconstitutional and unlawful under the Organic Act on State Audit, B.E. 2542 (1999), the submission of the matter together with an opinion to the Constitutional Court for a ruling was a case of a problem on the powers and duties of organs under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), as well as a problem that had actually occurred. The Constitutional Court could therefore accept this application for further ruling.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not the proceedings whereby the State Audit Commission's nomination of 3 suitable candidates for the position of State Audit Governor and the Senate passed a resolution to elect one State Audit Governor out of the three nominations made by the State Audit Commissioner was a selection process of the State Audit Governor that was constitutional.

The Constitutional Court held as follows. The State Audit Commission had carried out the selection and election of suitable candidates for the position of State Audit Governor where the person who received the highest number of votes which was not less than one-half of the existing members of the State Audit Commission was Mr. Prathan Dabpech. The proceedings were conducted in accordance with section 312 and section 333(1) of the

Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in conjunction with section 15 paragraph one subparagraph (6) and section 30 of the Organic Act on State Audit, B.E. 2542 (1999) and article 6(5) of the Rules of the State Audit Commission on Rules and Procedures for the Selection and Nomination of Suitable Candidates for the Position of State Audit Governor, B.E. 2543 (2000). Thereafter the Chairman of the State Audit Commission sent a letter on behalf of the State Audit Commission making a nomination of 3 candidates for the Senate to select. The Senate passed a resolution selecting one State Audit Governor out of the three nominations. In this case, when the Constitution provided that the State Audit Commission had the power and duty of selecting a suitable candidate for the position of the State Audit Governor and that the Senate was as an organ which gave advice to the King, whereby section 15 paragraph one subparagraph (6), section 30 and section 33 of the Organic Act on State Audit, B.E. 2542 (1999), provided that the State Audit Commission was the organ which made the selection and election of nominees presented to the Senate for approval, the giving of an approval of the Senate therefore meant that the Senate could only give its approval or disapproval of the candidate elected by a resolution of the State Audit Commission which had the highest number of votes and not less than one-half the existing members of the State Audit Commission. Hence, the Senate's election of Mrs. Jaruwan Menthaka, who was in the list presented by the Chairman of the State Audit Commission on behalf of the State Audit Commission which included a letter stating the election results of the State Audit Commission, and who received the second highest number of votes and less than one-half the number of existing members of the State Audit Commission, was therefore an exercise of powers and duties which was not in accordance with section 312 and section 333(1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 15 paragraph one subparagraph (6), section 30 and section 31 of the Organic Act on State Audit B.E. 2542 (1999) in conjunction with article 6(5) of the Rules of the State Audit Commission on Rules and Procedures for the Selection and Nomination of Suitable Candidates for the Position of State Audit Governor, B.E. 2543 (2000).

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that in the case under the application of the President of the National Assembly on problems relating to the exercise of powers and duties of the State Audit Commission and the Senate, which were organs under the Constitution, in the selection process of the State Audit Governor, there was an exercise of powers and duties that was unconstitutional for not being in accordance with section 312 and section 333 (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 15 paragraph one subparagraph (6), section 30 and section 31 of the Organic Act on State Audit, B.E. 2542 (1999) in conjunction with article 6(5) of the Rules of the State Audit Commission on Rules and Procedures for the Selection and Nomination of Suitable Candidates for the Position of State Audit Governor, B.E. 2543 (2000).
