

Summary of Constitutional Court Ruling

No. 51/2547

Dated 19th August 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. Poonpol Asawahem intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts that should have been disclosed.

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1. Background and summarized facts

The National Counter Corruption Commission (NCCC) filed an application at the Constitutional Court in request of a ruling under section 295 of the Constitution that Mr. Poonpol Asawahem intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts that should have been disclosed.

The facts could be summarized as follows. Mr. Poonpol Asawahem, the respondent, became a member of the House of Representatives on 17th November B.E. 2539 (1996) (this was a case of holding a political office prior to the promulgation of the current Constitution; upon promulgation of the Constitution on 11th October B.E. 2540 (1997), it was deemed that the respondent took political office on 11th October B.E. 2540 (1997)). He vacated the office of member of the House of Representatives on 9th November B.E. 2543 (2000). During that time, the respondent took office as secretary to the Minister of the Prime Minister's Office on 25th November B.E. 2540 (1997) and vacated office as secretary to the Minister of the Prime Minister's Office on 18th February B.E. 2544 (2001). The respondent submitted accounts showing particulars of assets and liabilities and supporting documents to the NCCC on 6 occasions, from the first occasion on 7th November B.E. 2540 (1997) thru the sixth occasion on 8th March B.E. 2545 (2002).

The applicant examined the accuracy and actual existence of assets and liabilities and discovered that the respondent had not disclosed items of assets and liabilities in accordance with the actual facts. In other words, the respondent represented in his accounts that he and Mrs. Prapaporn Asawahem, his spouse, did not have any assets in the form of investments,

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but an inspection at the Department of Business Development (Department of Business Registration) revealed that the respondent had investments (shares) in various companies, totaling 25 companies valued at 388,402,300 baht. Moreover, the spouse had investments (shares) in various companies, a total of 19 companies valued at 50,636,700 baht. The aggregate value of those investments amounted to 435,439,000 baht.

In a meeting on 8th January B.E. 2547 (2004), the applicant considered that the respondent failed to disclose assets and liabilities in the form of investments (shares) to the value of 435,439,000 baht in all 6 occasions submitted to the applicant. In this regard, the respondent was aware of the prior existence of such assets. Therefore, the applicant reached a unanimous resolution of 8 votes that the respondent intentionally submitted accounts which contained false statements or concealed facts that should have been disclosed and submitted the matter to the Constitutional Court for a ruling under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The respondent submitted a statement of defence stating that the respondent did not intend to submit accounts showing particulars of assets and liabilities which contained false statements or concealed facts that should have been disclosed because the shares held by himself and his spouse in all the companies were in fact held on behalf of Mr. Pibool Asawahem, the respondent's brother. It was argued that the respondent did not have any interest or received any benefits from such shareholdings. In addition, the respondent and his spouse had made blank endorsements for the transfer of shares in those companies held by the respondent and his spouse on behalf of Mr. Pibool Asawahem, which were already delivered to Mr. Pibool Asawahem. Therefore, Mr. Pibool Asawahem could make a return transfer at any time.

2. The issue considered by the Constitutional Court

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

The Constitutional Court, by a majority vote, held as follows. The respondent, a political office holding under section 291 of the Constitution who was under a duty to submit an account showing particulars of assets and liabilities of himself, his spouse and his children who had not yet become *sui juris* to the applicant on the occasion of taking office, vacating office and the lapse of one year after the vacation of office, had submitted accounts to the applicant on various occasions, a total of 6, without disclosing assets (shares) of himself and his spouse to the value of 435,439,000 baht in all 6 accounts submitted to the applicant even though such assets belonged to the respondent and his spouse and were acquired by the respondent and his spouse prior to and during his tenure in political office.

It could be stipulated from such acts that the respondent intentionally submitted accounts showing particulars of assets which contained false statements or concealed facts that should have been disclosed. Therefore, once the respondent knew of the existence of such assets (shares) before and at the time of submission of accounts but did not include such assets in the accounts submitted to the applicant, it was therefore deemed that they were intentionally submitted with false statements or concealed facts that should have been disclosed under section 295 of the Constitution. One Constitutional Court judge ruled that the application should be dismissed because all the shares held by the respondent and his spouse were acquired prior to taking political office. If there was a failure to submit an account, that would only be a deficiency in the submission, not an intention to violate section 295 of the Constitution.

3. Ruling of the Constitutional Court

The Constitutional Court held that the respondent intentionally submitted accounts showing particulars of assets and liabilities and supporting documents which contained false statements or concealed facts that should have been disclosed and was prohibited from holding any political office for a period of five years as from the date of vacating office under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
