

Summary of the Constitutional Court Ruling No. 62/2547

Dated 14th October B.E. 2547 (2004)*

Re: The National Counter Corruption Commission requested 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. Sittipol Jitrphumisak, member of the Nakhon Ratchasima Municipal Council, intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents.

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1. Background and summarized facts

The National Counter Corruption Commission (NCCC) filed an application requesting the Constitutional Court for a ruling under section 295 of the Constitution that Mr. Sittipol Jitrphumisak intentionally failed to submit accounts showing particulars of assets and liabilities and supporting documents on the occasions of taking office, vacating office and the lapse of one year after vacating office.

The facts could be summarized as follows. Mr. Sittipol Jitrphumisak, the respondent, took a political office as member of the Nakhon Ratchasima Municipal Council on 17th December B.E. 2538 (1995) and vacated such office on 16th December B.E. 2542 (1999). Section 291 and section 292 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 4(8), section 32 and section 33 of the Organic Act on Counter Corruption, B.E. 2542 (1999), provided that the respondent, who was a member of a Municipal Council, had the duty to submit an account showing particulars of assets and liabilities and supporting documents which were copies of evidence to prove the actual existence of such assets and liabilities. The respondent was also obliged to submit a copy of his personal income tax return for the preceding annual period to the NCCC, the applicant, on every occasion of taking office or vacating office. However, it appeared that the respondent incorrectly submitted accounts showing particulars of assets and liabilities on the occasion of taking office and vacating office. In other words, the respondent did not attach supporting documents which were copies of evidence that proved the actual existence of assets and liabilities, including a copy of the respondent's personal income tax return for the preceding year. In addition, on the occasion of one year after vacating office, the respondent did not submit an account showing particulars of assets and liabilities and supporting documents.

In a meeting on 18th March B.E. 2547 (2004), the applicant passed a unanimous resolution with 8 votes that the respondent intentionally failed to submit accounts showing

* Published in the Government Gazette, Vol. 122, Part 45a, dated 10th June B.E. 2548 (2005)

particulars of assets and liabilities and supporting documents on the occasions of taking office, vacating office and one year after vacating office, and to refer the matter to the Constitutional Court for a ruling under section 295 of the Constitution.

The respondent submitted a statement in defence of the allegations stating that the respondent had already submitted the documents to the applicant, but the applicant claimed that the documents were incorrect and incomplete. The respondent asserted that he did not have any other documents to submit and therefore requested the Constitutional Court to make a ruling based on the application. In any event, the respondent was willing to comply with a ruling of the Constitutional Court.

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 intentionally failed to submit supporting documents for accounts showing particulars of assets and liabilities on the occasions of taking office and vacating office and intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents on the occasion of one year after vacating office pursuant to section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court found that the respondent held office as member of the Nakhon Ratchasima Municipal Council from 17th December B.E. 2538 (1995) and vacated office on 16th December B.E. 2542 (1999). Therefore the respondent was a holder of a political office pursuant to section 291 paragraph one subparagraph (6) of the Constitution and section 4(8) of the Organic Act on Counter Corruption, B.E. 2542 (1999), who was under a duty to submit an account showing particulars of assets and liabilities on the occasion of taking office, vacating office and the lapse of one year after vacating office. The facts stated that on the occasion of taking office and vacating office, the respondent submitted accounts showing 3 items of assets and liabilities but failed to submit supporting documents to prove the actual existence of those 3 items of assets and liabilities. The respondent also failed to submit his personal income tax return for the preceding annual period. And on the occasion of one year after vacating office, the respondent did not submit an account showing particulars of assets and liabilities and supporting documents. From these facts, it could be concluded that the respondent intentionally failed to submit supporting documents for accounts showing particulars of assets and liabilities on the occasion of taking office and vacating office and intentionally failed to submit an account showing particulars of assets and liabilities on the occasion of one year after vacating office.

3. Ruling of the Constitutional Court

The Constitutional Court unanimously held that the respondent intentionally failed to submit an account showing particulars of assets and liabilities and supporting documents under section 295 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
