

Summary of the Constitutional Court Ruling No. 85/2547

Dated 23rd November B.E. 2547 (2004)*

Re: Members of the Thai Rak Thai Party requested the Constitutional Court for a ruling on whether or not a resolution of the Thai Rak Thai Party was in accordance with section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

.....

1. Background and summarized facts

Mr. Prayad Jantapal and members of the Thai Rak Thai Party (the applicants) filed an application for a Constitutional Court ruling. The facts could be summarized as follows. The Election Director for Yasothorn Provincial Administrative Organisation announced the opening of applications for candidates in an election of members of Yasothorn Provincial Administrative Council members and head of the Yasothorn Provincial Administrative Council between 9th – 13th February B.E. 2547 (2004). The election was scheduled for 14th March B.E. 2547 (2004) simultaneously with the rest of the country pursuant to the Provincial Administrative Organisation Act, B.E. 2540 (1997) and the Election of Members of Local Councils or Local Administrators Act, B.E. 2545 (2002). Such election laws and the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided as an election principle that an applicant was not allowed to have a political party affiliation but was only allowed to affiliate with various groups or apply independently since the government had undertaken a policy to decentralize powers to the regions in accordance with section 284 of the Constitution and the Act Prescribing Plans and Procedures for Decentralization of Powers to Local Administrative Organizations, B.E. 2542 (1999). The government was obliged to grant independence to local administrative organizations to enable self-government by safeguarding fairness and justice in the elections of local council members or local administrators. In spite of that, Thai Rak Thai Party manifested the party's intention and position regarding the election of local administrative organizations by passing a resolution which allowed Mr. Satiraporn Naksuk, a candidate for head of Yasothorn Provincial Administrative Organisation, and his associates to display the party's logo and disseminate the party's policies in their election campaign. The applicants considered that such a resolution exerted control over the election of a local administrative organization. They asserted, therefore, that the resolution was inconsistent with the fundamental principles of regional democratic administration. In addition, there were four Thai Rak Thai Party

* Published in the Government Gazette, Vol. 122, Part 67a, dated 16th August B.E. 2548 (2005)

members of the House of Representatives who performed duties that were contrary to or inconsistent with the fundamental principles of local administration under section 47 of the Constitution and such acts were also inconsistent with their capacities and exercise of functions as a member of the House of Representatives.

2. The issue considered by the Constitutional Court

The first issue which had to be considered by the Constitutional Court was whether or not the performance of duties by members of the House of Representative, who performed duties or rendered assistance in the election on behalf of the Thai Rak Thai Party, was contrary to or inconsistent with section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the power of the Constitutional Court to make a ruling under section 47 paragraph three of the Constitution was limited to a case where there was a request for a ruling that a resolution or regulation on any particular matter of a political party in which the applicant was a member was inconsistent with the capacity and performance of duties as a member of the House of Representatives under the Constitution; or a request for a ruling that a resolution or regulation on any matter of a political party in which the applicant was a member was contrary to or inconsistent with the fundamental principles of a democratic regime of government with the King as Head of State. This issue was outside the powers of the Constitutional Court to make a ruling.

The second issue which had to be considered by the Constitutional Court was whether or not the resolution of the Thai Rak Thai Party which allowed the use of party logo and dissemination of party policies in the election campaign was contrary to or inconsistent with the fundamental principle of a democratic regime of government with the King as Head of State under section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Although the Constitution did not define the phrase “fundamental principle of the democratic regime of government with the King as Head of State”, after examining the constitutional intent, it could be derived that such principle referred to a number of principles, e.g. (1) sovereign powers belonged to the people of the Kingdom of Thailand, (2) the people had the right to elect representatives to exercise powers to administer various State and local affairs, (3) the State must respect human dignity, rights and liberties recognized by the Constitution, (4) the State could not restrict such rights and liberties except by virtue of provisions of law and (5) the people and State officials must comply with the law and accept a regime of government by the majority with due respect given to the minority.

The Constitutional Court held as follows. The law did not provide that a candidate for a local election must be affiliated with a political party. The purpose of this was to open up the opportunity for candidates to compete on an equal basis. Therefore, a candidate had the choice between applying in a party’s name or independently. Application in the name of

a party and receiving supporting from such party did not affect the independence of a local administrative organization because local independence meant that the local administrative organizations had independence in the formulation of administrative policies, administration, personnel administration, finance and fiscal matters as well as possess its own specific powers. The Thai Rak Thai Party resolution which allowed Mr. Satiraporn Naksuk, a candidate for head of Yasothon Provincial Administrative Organisation, and his associates to use the party logo and disseminate party policies in their election campaign did not make the election of the local administrative organization subject to the exertion of control by a political party. Such resolution did not in any manner deprive the electorate in such locality of their right and liberty to elect a representative which constituted the fundamental principle in the democratic regime government with the King as Head of State.

3. Ruling of the Constitutional Court

The resolution of Thai Rak Thai Party which allowed the use of party logo and dissemination of party policies in an election campaign was neither contrary to nor inconsistent with the fundamental principle of a democratic regime of government with the King as Head of State under section 47 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
