

Summary of Constitutional Court Ruling

No. 8/2563 (2020)

Dated 10th June B.E. 2563 (2020)

Re: The Election Commission requested for a Constitutional Court ruling under section 82 of the Constitution on whether or not the Senate membership of Mr. Ravee Roongruang terminated under section 111(4) in conjunction with section 108 B. Prohibitions (1) and section 98(8) of the Constitution.

1. Summary of background and facts

Mr. Srisuwan Janya submitted a matter to the Election Commission, applicant, to examine the Senate membership of Mr. Ravee Roongruang, respondent, due to the possible lacking of qualification or having a disqualification under section 108 B. Prohibitions (1) in conjunction with section 98(8) of the Constitution, thereby causing termination of Senate membership under section 111(4) of the Constitution.

The applicant appointed a fact finding committee and received a fact finding report that the respondent was recruited by the Senators Recruitment Committee and selected by the National Council for Peace and Order to become a Senator pursuant to section 269 of the Constitution. Subsequently, a Royal Proclamation appointed the respondent as Senator pursuant to the Announcement of Senator Appointments on 11th May B.E. 2562 (2019). Prior to assuming office as Senator, the respondent had held an official position as administrative officer, level 3, Tha Yang District, Phetchaburi Province. Approximately between the months of December B.E. 2535 (1992) and January B.E. 2536 (1993), the respondent demanded monies from examination candidates for selection of members of the Territorial Defence Corps. Such actions constituted a dishonest conduct under section 98 paragraph one of the Civil Service Act B.E. 2535 (1992). The respondent received a disciplinary punishment of 1-step salary reduction pursuant to Phetchaburi Province Order No. 1367/2535 Re: Government Official Salary Reduction, dated 10th August B.E. 2536 (1993). Subsequently, the Civil Service Sub-Commission of the Ministry of Interior found that the respondent's conduct constituted a serious disciplinary breach under section 98 paragraph two of the Civil Service Act B.E. 2535 (1992), and thus reached a resolution to increase the disciplinary punishment to expulsion from official service. Department of Local Administration Order No. 689/2539 Re: Increase of Penalty for Government Official, dated 15th August B.E. 2539 (1996), increased the penalty of the respondent to expulsion from official service. The order was final. In the year B.E. 2547 (2004), the respondent was elected to become the Chief Executive of the Nong Khanan Tambon Administrative Organisation, Phetchaburi Muang District, Phetchaburi

Province. The respondent served the full term in office. Thereafter, in the year B.E. 2551 (2008), the respondent was elected to another term in office as Chief Executive of Nong Khanan Tambon Administrative Organisation. The Provincial Election Commission received a complaint that the respondent was disqualified from candidacy in the election of Chief Executive of Tambon Administrative Organisation pursuant to section 45(17) of the Election of Local Assembly Members and Local Executives Act B.E. 2545 (2002) and section 58/1 of the Tambon Assembly and Tambon Administrative Organisation Act B.E. 2537 (1994). The respondent was subject to legal proceedings and an action in Phetchaburi Provincial Court pursuant to an allegation of making a false declaration to an authorized officer when making an entry in a public record or official record intended for use as evidence in manner which could be detrimental to another person or the public. The court delivered judgment that the respondent committed an offence under section 267 of the Penal Code and sentenced the respondent to a 6-month term of imprisonment and a fine of 6,000 baht. The imprisonment penalty was suspended for 2 years. The respondent appealed. The Court of Appeals Region 7 affirmed the judgment.

The applicant was of the opinion that, even though the respondent was cleared of dishonour under the Act to Purge Dishonourable Record on the Occasion of the 50th Anniversary of His Majesty King Bhumibol Adulyadej's Accession to the Throne B.E. 2539 (1996) and the Act to Purge Dishonourable Record on the Occasion of His Majesty King Bhumibol Adulyadej's 80th Anniversary B.E. 2550 (2007), this only meant that the respondent had never been subject to a disciplinary action of expulsion from official service. This did not mean that the conduct or actions of the respondent which constituted the cause for disciplinary action were also cleared as per Supreme Court Judgment No. 694/2539. The applicant reached a resolution and Election Commission Ruling No. 150/2562, dated 9th September B.E. 2562 (2019), to refer the matter to the Constitutional Court for a ruling under section 82 of the Constitution on whether or not the Senate membership of the respondent terminated under section 111(4) in conjunction with section 108 B. Prohibitions (1) and section 98(8) of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to accept this application for a ruling under section 82 of the Constitution.

After deliberations, the Constitutional Court found that the applicant had reached a resolution that the Senate membership of the respondent terminated under section 111(4) in conjunction with section 108 B. Prohibitions (1) and section

98(8) of the Constitution, and submitted an application to the Constitutional Court. This case was in accordance with section 82 paragraph one of the Constitution and section 7(5) of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018). The Constitutional Court therefore ordered the acceptance of this application for consideration and directed the respondent to submit a reply to the allegations.

3. Respondent's reply

The respondent submitted the following reply. The respondent was not prohibited from exercising the right to become an election candidate under section 98(8) of the Constitution and was not disqualified from recruitment and selection for senatorial office under section 108 B. Prohibitions (1) of the Constitution since the respondent was cleared of dishonour under section 5 of the Act to Purge Dishonourable Record on the Occasion of the 50th Anniversary of His Majesty King Bhumibol Adulyadej's Accession to the Throne B.E. 2539 (1996). Moreover, the respondent had already received disciplinary punishment in the form of a 1-step salary reduction pursuant to Phetchaburi Province Order No. 1367/2536 Re: Government Official Salary Reduction, dated 10th August B.E. 2536 (1993). Thus, the Department of Local Administration's submission of disciplinary matter to the Civil Service Sub-Commission of the Ministry of Interior for consideration and the resolution of the Civil Service Sub-Commission of the Ministry of Interior to increase the respondent's penalty to expulsion from official service, was therefore an increase in penalty which the respondent had already served and had already been cleared of dishonor prior to 9th June B.E. 2539 (1996). The increase in penalty was therefore inapplicable to the respondent.

4. The issues considered by the Constitutional Court

The Constitutional Court determined that the issue for consideration was whether or not the respondent was disqualified from becoming a Senator under section 108 B. Prohibitions (1) in conjunction with section 98(8) of the Constitution thereby causing the respondent's membership of the Senate to terminate under section 111(4) of the Constitution, and if so, when such termination initiated.

After deliberations, the Constitutional Court found as follows. Section 269 of the Constitution provided that in the initial period, the Senate comprised of two hundred and fifty members appointed by the King by the advice of the National Council for Peace and Order. Recruitment and appointments should proceed in accordance with such provision. The Constitution provided for common qualifications and prohibitions of Members of the House of Representatives, Senators

and Council of Ministers, in order to ensure that installation of Senators who were impartial, and enjoyed the confidence and acceptance of the public in the performance of functions stated in the Constitution, laws and rule of law principle. This included the principle of honesty, being one of the key principles under the rule of law. Furthermore, section 111 (4) of the Constitution was a provision on the cause for termination of membership of the Senate in the event that a person lacked a qualification or had a disqualification for the office of Senator under section 108. Section 108 B. Prohibitions (1) provided a disqualification that a person holding the office of Senator must not be a person disqualified from exercising the right to be a candidate in an election of Members of the House of Representatives under section 98(8) which provided that a person who had been removed from official service, a state agency or state enterprise due to a dishonest performance of duties or the commission of an act deemed to be dishonest or a wrongful conduct in the official service.

The Act to Purge Dishonourable Record on the Occasion of the 50th Anniversary of His Majesty King Bhumibol Adulyadej's Accession to the Throne B.E. 2539 (1996) and Act to Purge Dishonourable Record on the Occasion of His Majesty King Bhumibol Adulyadej's 80th Anniversary B.E. 2550 (2007) purged the dishonourable record of a person who had been subject to a disciplinary penalty, who would be deemed as a person who had never been subject to a disciplinary penalty for such wrongdoing. However, the Acts did not have the effect of purging the wrongdoings that had already been committed which constituted causes for disciplinary penalty, nor did they have the effect of purging disgraceful conduct or defects in good morals due to such actions. Therefore the purge of dishonourable records under both Acts purged the dishonourable records of all persons who had served penalties for the wrongdoings, merely treating such persons as having never been subject to a disciplinary penalty or caution, but did not have the effect of purging a judgment or disciplinary penalty order stipulating a wrongdoing which constituted a cause for penalty or caution. In addition, this law provided a standard for all state agencies to comply, and applied to other laws of the same or lower hierarchy. However, the application of both Acts to purge dishonourable record in a manner which would be contrary to or inconsistent with the Constitution was prohibited under section 5 of the Constitution, being the supreme law of the country. The Constitution provided that a person who had been expelled from official service due to a dishonest performance of duties or commission of an act deemed to be a dishonest or wrongful conduct in official service was prohibited from becoming a Senator under section 108 B. Prohibitions (1) in conjunction with section 98(8) of the Constitution. Such provision was intended to provide screening of

qualifications and prohibitions of a person prior to becoming a Senator to ensure public acceptability and trust, without any uncertainty. The person assuming office as Senator would be able to perform duties impartially, free from political interference and conflicts of interests. Therefore, it was found that the respondent's purge of dishonourable record under both Acts to purge dishonourable record did not have the effect of clearing the respondent of the disqualification from becoming a Senator under section 108 B. Prohibitions (1) in conjunction with section 98(8) of the Constitution.

Upon a finding of fact that the respondent, prior to Royal Appointment to become a Senator, was subject to a disciplinary penalty of expulsion from official service due to a serious malicious conduct pursuant to Department of Local Administration Order No. 689/2539, dated 15th August B.E. 2539 (1996), with regard to the demand of monies from examination candidates for selection of members of the Territorial Defence Corps, being a dishonest conduct, it was therefore found that the respondent was a person who had been expelled from official service due to a dishonest performance of duties or commission of an act deemed to be dishonest or a wrongful conduct in official service. The respondent was therefore prohibited from exercising the right to be a candidate in the election of Senators and was disqualified under section 108 B. Prohibitions (1) in conjunction with section 98(8) of the Constitution. As a consequence, the respondent's membership of the Senate terminated under section 111(4) of the Constitution as from the day of Royal Appointment, i.e. 11th May B.E. 2562 (2019). Upon the termination of the respondent's membership of the Senate, there was a vacancy in membership of the Senate acquired by recruitment and appointment pursuant to section 269(1)(b) of the Constitution. In such event, section 269(4) of the Constitution provided that the next name in the reserve list under section 269(1)(c) would be promoted to become a Senator in lieu of the vacancy. The senatorial office was deemed to become vacant on the day the Constitutional Court duly read the ruling to the parties pursuant to section 76 paragraph one of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018), which provided that a court ruling came into effect on the day of reading, i.e. 10th June B.E. 2563 (2020).

5. Ruling of the Constitutional Court

The Constitutional Court held that the respondent was a person disqualified from being a Senator under section 108 B. Prohibitions (1) in conjunction with section 98(8) of the Constitution. As a consequence, the respondent's membership of the Senate terminated under section 111(4) of the Constitution as of 11th May B.E. 2562 (2019), and it was deemed that the day of Constitutional Court reading of the ruling

to the parties was the day of vacancy of senatorial office under section 269(4) of the Constitution in conjunction with section 76 paragraph one of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018), which provided that a ruling of the court came into effect on the day of reading, i.e. 10th June B.E. 2563 (2020).
