

The Constitutional Court
The Kingdom of Thailand

Constitutional Court Order

No. 48/2563 (2020)

Dated 1st July B.E. 2563 (2020)

Between	{	President of the House of Representatives	Applicant
		Captain Thamanat Prompow	Respondent

Re: The President of the House of Representatives submitted an application to the Constitutional Court for a ruling under section 82 of the Constitution on whether or not the House of Representatives membership of Captain Thamanat Prompow terminated under section 101(7) in conjunction with section 184 paragraph one (2) and paragraph three of the Constitution.

The facts in the application and supporting documents can be summarised as follows. Mr. Pita Limjaroenrat, Member of the House of Representatives and others, a total of 54 persons, signed a petition to the President of the House of Representatives, applicant, requesting that an application be submitted to the Constitutional Court for a ruling under section 82 paragraph one of the Constitution that the House of Representatives membership of Captain Thamanat Prompow, respondent, terminated under section 101(7) in conjunction with section 184 paragraph one (2) and paragraph three of the Constitution due to Mrs. Arisara Prompow, the respondent's wife, holding shares in Khlong Toei Market (2551) Company Limited, which had a contract granting lease over an area of Khlong Toei Market to invest in the development of a market area and market accessories with the Port Authority of Thailand for a period of 10 years. Such contract had monopolistic characters over other private entities. Thus, it was asserted that the respondent's wife was a shareholder in a company which was granted a concession or entered into a contract with a state agency or state enterprise having monopolistic characters, being a prohibited act under section 184 paragraph one (2) and paragraph three of the Constitution. As a consequence, the respondent's membership of the House of Representatives terminated under section 101(7) of the Constitution.

The applicant had examined the signatures of the petitioners and found that 54 Members of the House of Representatives had jointly submitted the petition. This number was deemed not less than one-tenth of the existing Members of the House of Representatives pursuant to section 82 paragraph one of the Constitution. The application was therefore submitted to the Constitutional Court for a ruling that the respondent's membership of the House of Representatives terminated under section 101 (7) in conjunction with section 184 paragraph one (2) and paragraph three of the Constitution.

The preliminary issue considered by the Constitutional Court was whether or not the application was in accordance with section 82 paragraph one of the Constitution for the Constitutional Court to accept for consideration.

Section 82 paragraph one of the Constitution provided that "Members of the House of Representatives or Senators constituting not less than one-tenth of the existing Members of each respective House have the right to enter a petition to the President of the House of membership that the membership of a person in such House terminated under section 101(3), (5), (6), (7), (8), (9), (10) or (12), or section 111(3), (4), (5) or (7), as the case may be, and the President of the House receiving the application shall submit the application to the Constitutional Court for a ruling on whether or not the membership of such person terminated." Section 7 of the Organic Act on Procedures of the Constitutional Court B.E. 2561 (2018) provided that "the Court shall have the duties and powers to adjudicate the following cases... (5) a case relating to the termination of membership of a Member of the House of Representatives or Senator..."

After deliberations, the Constitutional Court found as follows. 54 Members of the House of Representatives, being a number not less than one-tenth of the existing Members of the House of Representatives signed a petition to the President of the House of Representatives, applicant, to submit an application to the Constitutional Court for a ruling on the termination of the respondent's membership of the House of Representatives under section 101(7) in conjunction with section 184 paragraph one (2) and paragraph three of the Constitution. The applicant has already submitted the application to the Constitutional Court. Nevertheless, whether or not the Constitutional Court will accept an application for consideration under section 82 paragraph one of the Constitution, apart from examining the process of application submission, the substance of the application must also be examined to determine the existence of constitutional grounds. Since the Constitution did not provide measures for examining the grounds in the application prior to submission to the Constitutional Court for consideration under section 82 paragraph one of the Constitution, there is no process for screening grounds of application upon the

approval of such House. Therefore, in fairness to the respondent, the Constitutional Court found it necessary to examine grounds prior to order the acceptance of the application for consideration.

Upon examination of the facts under the application and supporting documents, the Constitutional Court found that the respondent's wife held shares in Khlong Toey (2551) Company Limited, and the said company entered in to a contract to lease land from the Port Authority of Thailand for the purpose of investing in the development of market area and market accessories whilst other private entities remained able to operate market businesses in the vicinity. The contract does not have the characters of a monopoly under section 184 paragraph one (2) of the Constitution. There was no commission of prohibited act under section 184 paragraph one (2) and paragraph three of the Constitution. The grounds of the application are not in accordance with section 101(7) of the Constitution which would enable the applicant to request the Constitutional Court for a ruling under section 82 of the Constitution.

By virtue of the aforesaid reasons, the Constitutional Court therefore orders the rejection of this application for consideration.
