

Summary of the Constitutional Court Ruling No. 14/2545

Dated 18th April B.E. 2545 (2002) *

Re : The National Counter Corruption Commission requests 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. Somboon Neanhom intentionally failed to submit his account showing assets and liabilities and supporting documents.

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1. Background and summarized facts

The National Counter Corruption Commission (NCCC) submitted an application under section 295 of the Constitution, the essence of which can be summarized as follows. Mr. Somboon Neanhom, the respondent, was a local assembly member of the Khok Kham Tambon Administrative Organization (TAO), Samut Sakhon province. As a result, Mr. Neanhom was a holder of a political position under section 291 of the Constitution read in conjunction with the Organic Act on the Counter Corruption Commission, B.E. 2542 (1999) and the Notification of the NCCC, dated 30th December B.E. 2542 (1999) which prescribed a criteria for the income of local government organizations such that administrators and members of the local assembly with income in accordance with such Notification became a holder of a political position with the duty to submit accounts showing assets and liabilities to the NCCC on each occasion of taking office, vacating office and after the expiration of one year after the vacation of office.

Khok Kham TAO, Samut Sakhon province incurred income which satisfied the criteria under the Notification of the NCCC. Hence, the administrators and members of the local assembly were under a duty to submit accounts showing assets and liabilities within 30 days as from 1st February B.E. 2543 (2000). The respondent failed to meet the said deadline without notifying the NCCC of any cause for such failure. As a result, the NCCC resolved on 20th February B.E. 2543 (2000) that the respondent intentionally failed to submit an account of assets and liabilities to the NCCC and an application was made to the Constitutional Court for a ruling under section 295 of the Constitution on the following matters:

(1) that the respondent intentionally failed to submit an account of assets and liabilities to the NCCC;

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(2) that the respondent vacated office as from the date of expiration of the time limit for the submission and shall be prohibited from holding any political position for five years as from the date of the vacation of office.

2. Preliminary issue

Was the respondent a holder of a political position with a duty to declare accounts showing particulars of assets and liabilities?

The Constitutional Court held that the respondent, as a local assembly member of the Khok Kham TAO whose income met the criteria prescribed in the Notification of the NCCC, was a holder of a political position under the definition in section 291(6) of the Constitution read in conjunction with section 4 of the Organic Act on the National Counter Corruption Commission, B.E. 2542 (1999). Hence, the respondent was under a duty to submit an account showing assets and liabilities to the NCCC under section 291 and section 292 of the Constitution in conjunction with section 4 and section 32 of the Organic Act on the National Counter Corruption Commission, B.E. 2542 (1999) and the Notification of the National Counter Corruption Commission, dated 30th December B.E. 2542 (1999).

3. The issues considered by the Constitutional Court

First issue: whether or not the respondent intentionally failed to submit an account of assets and liabilities on the occasion of taking office and vacating office.

Second issue: the respondent vacated office and was prohibited from holding any political position as of which date.

4. Ruling of the Constitutional Court

(1) On the first issue, the majority of the Constitutional Court held by 14 votes that Mr. Somboon Neanhom intentionally failed to submit an account of assets and liabilities and supporting documents under section 295 of the Constitution. One Constitutional Court judge was of the opinion that the respondent was not under a duty to submit such accounts because the NCCC did not have the power to issue a Notification prescribing the criteria of income of a TAO in which the holder of a political position had the duty to submit an account and that the application should be dismissed.

(2) On the second issue, the Constitutional Court by 8 votes, held that the respondent vacated office and was prohibited from holding any political position for a period of five years as from the actual date of vacating office by his resignation on 1st July B.E. 2543 (2000).

Five Constitutional Court judges held that the respondent vacated office and was prohibited from holding any political position for a period of five years as from the date of the expiration of the time limit for the submission of accounts on 1st March B.E. 2543 (2000).

One Constitutional Court judge held that the respondent vacated office and was prohibited from holding any political position for a period of five years as from the date on which the case was discovered by the NCCC on 20th February B.E. 2544 (2001)

The Constitutional Court judge who on the first issue held that the application be dismissed did not rule on the second issue.
