

Summary of Constitutional Tribunal Ruling No. 7/2550

Dated 26th July B.E. 2550 (2007)*

Re: The National Counter Corruption Commission requested for a Constitutional Tribunal ruling in the case of Mr. Naraint Dhamakrisda's intentional failure to submit an account of assets and liabilities and supporting documents.

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1. Summary of background and facts

The National Counter Corruption Commission (NCCC), the applicant, filed an application dated 18th April B.E. 2550 (2007) requesting for a Constitutional Tribunal ruling under section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006), and section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in the case of Mr. Naraint Dhamakrisda's, the respondent, intentional failure to submit an account of assets and liabilities and supporting documents.

The facts under the application and supporting documents could be summarized as follows. The respondent was a member of Surin Municipal Council, elected on 25th December B.E. 2542 (1999). Under section 4(9), section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999) in conjunction with Notification of National Counter Corruption Commission Re: Prescription of Revenue Criteria for Local Administrative Organizations for the Purpose of Determining Local Administrators and Members of Local Administrative Organization Councils as Political Position Holders, dated 30th December B.E. 2542 (1999), which became effective as of 1st February B.E. 2543 (2000), administrators and council members of a municipality having revenues of not less than two hundred million baht were considered as holders of political positions and were under a duty to submit an account of assets and liabilities to the NCCC. An inspection revealed that Surin Municipality raised a total revenue of 278,588,478.93 baht in the B.E. 2542 (1999) budget year, thus falling within the said criterion. As a result, the administrators and members of Surin Municipal Council were under a duty to submit accounts of assets and liabilities and supporting documents to the NCCC on the occasions of taking office, vacating office and the expiration of one year after vacation of office. However, it appeared that the respondent failed to submit accounts of assets and liabilities and supporting documents to the applicant under such Organic Act on the occasion of vacating office on 27th August B.E. 2546 (2003),

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the deadline for submission being 25th September B.E. 2546 (2003), and on the occasion of the expiration of one year after vacation of office on 27th August B.E. 2547 (2004), the deadline for submission being 25th September B.E. 2547 (2004).

In meeting no. 21/2550, held on 15th March B.E. 2550 (2007), the applicant passed a unanimous resolution by 6 votes that the respondent intentionally failed to submit accounts of assets and liabilities and supporting documents within the periods prescribed by law on the occasions of vacation of office and the expiration of one year after the vacation of office. The matter was therefore referred to the Constitutional Tribunal for ruling.

During trial in the Constitutional Tribunal, the respondent did not submit a statement in reply to the allegations. The Constitutional Tribunal therefore posted a copy of the application at the official premises of the Constitutional Tribunal. At the expiration of fifteen days as from the date of posting, the respondent still did not submit a statement in reply to the allegations to the Constitutional Tribunal.

2. Preliminary issue

The Constitutional Tribunal held that this case was in accordance with section 35 paragraph one of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in conjunction with section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999) and clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006). Therefore, the application was admitted for consideration.

3. Issue considered by the Constitutional Tribunal

The issue which required ruling by the Constitutional Tribunal was whether or not the respondent intentionally failed to submit accounts of assets and liabilities and supporting documents on the occasions of vacating office and the expiration of one year after the vacation of office under section 34 of the Organic Act on Counter Corruption in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006) and section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

After consideration, the Constitutional Tribunal made the following decision. Surin Municipality's revenues were within the criterion prescribed by the Notification of National Counter Corruption Commission Re: Prescription of Revenue Criteria for Local Administrative Organizations for the Purpose of Determining Local Administrators and Members of Local Administrative Organization Councils as Political Position Holders, dated 30th December B.E. 2542 (1999). Thus, administrators and members of Surin Municipal Council were political position holders. The respondent was a member of Surin Municipal Council, elected on 25th December B.E. 2542 (1999), and was therefore a political position holder under a duty to submit an account of assets and liabilities of himself, his spouse and

children who had not yet reached *sui juris* to the applicant under section 4(9), section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999). It was found on the facts that the respondent had already submitted an account of assets and liabilities and supporting documents on the occasion of taking office. However, with respect to the requirement for the submissions of accounts of assets and liabilities and supporting documents on the occasions of vacating office and the expiration of one year after the vacation of office, the respondent did not make such submissions of accounts of assets and liabilities and supporting documents. The respondent also failed to give a statement of facts on such non-submissions. The applicant summoned the respondent to give an oral statement and the respondent's statement could be summarized as follows. After the vacation of office, the respondent was aware of his obligation to submit an account of assets and liabilities and supporting documents on the occasion of vacation of office and that failure to make such a submission would result in penalties. Nonetheless, the respondent did not intend to continue his political career and therefore did not submit an account of assets and liabilities and supporting documents. Upon the Constitutional Tribunal's admission of the application for trial, an opportunity was given to the respondent to submit a statement in reply to the allegations to the Constitutional Tribunal but the respondent still did not submit any statement in reply to the allegations. Therefore, it was found on the facts that the respondent intentionally failed to submit accounts of assets and liabilities to the applicant on the occasions of vacating office on 27th August B.E. 2546 (2003) and the expiration of one year after the vacation of office.

4. Ruling of the Constitutional Tribunal

The Constitutional Tribunal passed a unanimous ruling by 5 votes that the respondent intentionally failed to submit accounts of assets and liabilities and supporting documents on the occasions of vacating office and the expiration of one year after the vacation of office and was prohibited from holding a political position for a period of five years as from 27th August B.E. 2546 (2003) as stated under section 34 of the Organic Act on Counter Corruption B.E. 2542 (1999) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006).
