

Summary of Constitutional Court Ruling No. 24/2550

Dated 19th November B.E. 2550 (2007)*

Re: The National Counter Corruption Commission requested for a Constitutional Tribunal ruling in the case of an intentional failure by Mr. Phatrabot Worawanpreecha, member of the Nonthaburi Provincial Administrative Organization Assembly, to submit accounts 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) submitted an application, dated 28th May B.E. 2550 (2007), to the Constitutional Tribunal in request of a ruling that Mr. Phatrabot Worawanpreecha (the respondent), member of Nonthaburi Provincial Administrative Organization Assembly, intentionally failed to submit accounts of assets and liabilities and supporting documents to the NCCC within the period prescribed by law on the occasions of leaving office and the expiration of one year after leaving office. It was requested that the respondent be prohibited from holding a political position for a period of five years as from 4th February B.E. 2547 (2004), which was the actual date of the respondent's retirement from membership of the Nonthaburi Provincial Administrative Organization Assembly, 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).

The applicant had found upon inspection that the respondent intentionally failed to submit accounts to the applicant within the period prescribed by law on the occasions of leaving office and the expiration of one year after leaving office. The Office of the NCCC had sent a total of six letters of notices and warnings to the respondent, requiring the respondent to give a statement of facts and reasons, but the respondent neither gave any statement of facts nor submitted any account. Moreover, on 6th July B.E. 2549 (2006), the respondent was entrusted by Miss Wipawal (Wipawan) Worawanpreecha, his elder sister and member of Nonthaburi Provincial Administrative Organization Assembly during the same term, to submit an account on her behalf on the occasion of the expiration of one year since Miss Wiphawal's retirement from office to the Office of the NCCC, but the respondent still failed to submit any of his own accounts.

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The respondent submitted a statement in reply to the allegations to the Constitutional Tribunal which could be summarized as follows. The respondent was well aware of his duty to submit accounts. The respondent admitted that he had not submitted accounts after several attempts to contacts to submit accounts, but his non-submission was due to the fact that the required documents relating to land deeds were not ready as they were kept with the respondent's father whose relationship with the respondent was not pleasant. The respondent was therefore unable to submit the land deeds. Also, the respondent was under an obligation to care for his family, including his elderly grandfather, a pregnant wife and children. Thus, at times, the respondent could have forgotten tasks that were required or tasks which had not yet been carried out.

2. Preliminary Issue

A preliminary issue which had to be decided was whether or not the Constitutional Court had the power to resume the trial and adjudication of this application.

The Constitutional Tribunal had 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) and section 34 of the Organic Act on Counter Corruption B.E. 2549 (2006) in conjunction with clause 3 of the Announcement of the Council for Democratic Reform No. 31, dated 30th September B.E. 2549 (2006). This application was therefore admitted for trial and adjudication. The respondent was given an opportunity to submit a statement in reply to the allegations by a letter, dated 5th June B.E. 2550 (2007), informing the respondent to submit a reply statement. The respondent submitted a statement in reply to the allegations, dated 17th July B.E. 2550 (2007), to the Constitutional Tribunal.

Pending proceedings of this application, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated, wherein section 300 of such Constitution provided for the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) to become the Constitutional Court, and that all cases or matters pending proceedings in the Constitutional Tribunal would be resumed by the Constitutional Court. The case under this application was therefore within the trial and adjudication powers of the Constitutional Court.

3. Issue Considered by the Constitutional Court

The issue which had to be decided was whether or not the respondent intentionally failed to submit accounts of assets and liabilities and supporting documents to the NCCC within the period prescribed by law on the occasions of leaving office and the expiration of one year after leaving office 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).

From the application and supporting documents submitted by the applicant, and the statement of the respondent, it was finally resolved on the facts as follows. Nonthaburi Provincial Administrative Organization raised a total amount of 336,523,645.41 baht in revenues in the budget year of B.E. 2542 (1999). Nonthaburi Provincial Administrative Organization was therefore a local administrative organization with revenues meeting the criteria prescribed by Notification of the NCCC Re: Prescription of Revenue Criteria of Local Administrative Organizations for the Determination of Administrators and Assembly Members of Local Administrative Organizations as Political Position Holders, dated 30th December B.E. 2542 (1999), which provided a criterion that where a provincial administrative organization raised not less than one hundred million baht in revenues, the local administrators and members of the local assembly would become holders of political positions with duties to submit accounts to the NCCC. The respondent was a member of Nonthaburi Provincial Administrative Organization after taking office on 5th February B.E. 2543 (2000). The respondent was therefore a political position holder under a duty to submit accounts to the applicant within thirty days of every occasion of taking office, leaving office and the expiration of one year after leaving office under section 4(9), section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999). The respondent took office as a member of the Nonthaburi Provincial Administrative Organization Assembly on 5th February B.E. 2543 (2000) and left office at the expiration of term on 4th February B.E. 2547 (2004). The respondent submitted an account only on one occasion, the occasion of taking office, but did not submit accounts on two other occasions, the occasions of leaving office and the expiration of one year after leaving office, without giving notice of reasons to the applicant. Despite the applicant's 6 letters to the respondent requesting for a statement of facts, of which receipts were admitted by the respondent, no reasons were given for the non-submissions. Moreover, when the respondent was entrusted by Miss Wipawal, the respondent's elder sister and member of the Nonthaburi Provincial Administrative Organization Assembly during the same term, to submit an account on behalf of Miss Wipawal on the occasion of the expiration of one year since her retirement from office at the Office of the NCCC, the respondent still failed to make any submission of his own accounts. It was therefore found that the respondent was aware of his duty to submit accounts to the applicant on the occasions of leaving the office of member of Nonthaburi Provincial Administrative Organization Assembly and the expiration of one year after leaving such office, but the respondent intentionally failed to submit accounts on such occasions within the period prescribed by law.

As for the respondent's submission of a statement in reply to the allegations citing several reasons supporting the assertion that the respondent did not intend to withhold the submission of accounts to the application, the Constitutional Court held as follows. The provisions of section 32 and section 33 of the Organic Act on Counter Corruption B.E. 2542 (1999) were enacted in order to implement the provisions of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) in Chapter 10 Inspection of the Exercise of State Powers, Part 1 Declaration of Accounts Showing Particulars of Assets and Liabilities, section 291 and section 292, which contained the important principle intended to create a truly reliable

and efficient system for the detection of corruption by political position holders. Therefore section 32 of the Organic Act on Counter Corruption B.E. 2542 (1999) provided that a political position holder had to submit accounts of assets and liabilities of himself/herself, his/her spouse and children who had not yet become *sui juris* as they existed at the date of such submission of accounts. The political position holder was also required to submit supporting documents, consisting of copies of evidence proving the actual existence of such assets and liabilities, including a copy of his/her personal income tax return form for the proceeding year. More importantly, section 33 provided a timeframe for the political position holder to submit the accounts on three occasions, namely, the first occasion upon taking office, the second occasion upon leaving office and the third occasion upon the expiration of one year after leaving office. Such submissions were required in order to provide the NCCC with information for scrutinizing the assets of political position holders throughout the entire duration of such person's political office term and exercise of state powers in public administration, so as to detect any irregular changes in such political position holder's assets. If there was an irregular increase in assets, the NCCC would notify such political position holder or heir or estate administrator, as the case may be, to explain the acquisition of such assets as part of the proceedings under section 38 to vest such assets in the state. Thus, the rules and procedures, as well as the timeframe, in section 32 and section 33 which required undertakings by the political position holder in relation to the submission of accounts were fundamental rules which all political position holders had to be aware of as well as appreciate that strict compliance of those duties were required. It was therefore unacceptable for the respondent or any political position holder to claim family relationships, or personal reasons pertaining to occupational or family duties in caring for the elderly, including those in relation to his wife or children, as causes for overlooking the submission of accounts to the applicant within the period prescribed by law and as an excuse for an unintentional violation of the legal provisions stated above. To hold otherwise would render the mechanisms for detecting corruption and wrongful acts of political position holders provided by the Constitution ineffective for the purposes of scrutiny carried out by the NCCC. The defences claimed by the respondent in the reply statement were therefore unsustainable.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that Mr. Phatrabot Worawanpreecha, the respondent, intentionally failed to submit accounts of assets and liabilities and supporting documents on the occasions of leaving office and the expiration of one year after leaving office, and that the respondent was prohibited from holding any political position for a period of five years as from 4th February B.E. 2547 (2004) 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).
