

Summary of Constitutional Court Ruling No. 26/2550

Dated 20th December B.E. 2550 (2007)*

Re: The National Counter Corruption Commission requested for a Constitutional Ruling in the case of an intentional failure by Mr. Pongsak Maliyaem, member of Samut Prakaran Provincial Administrative Organization Assembly, to submit an account of assets and liabilities and supporting documents on the occasion of the expiration of one year after leaving office.

.....

1. Summary of Background and Facts

The National Counter Corruption Commission (NCCC), the applicant, submitted an application dated 27th July B.E. 2550 (2007) to the Constitutional Tribunal in request of a 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 July B.E. 2549 (2006), and section 35 of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) in the case of an intentional failure by Mr. Pongsak Maliyaem to submit an account of assets and liabilities and supporting documents to the NCCC within the prescribed period on the occasion of the expiration of one year after leaving office. The application could be summarized as follows. Mr. Pongsak Maliyaem, the respondent, held the position of member of Samut Prakarn Provincial Administrative Organization Assembly after being elected on 5th February B.E. 2543 (2000) and retired from office due to the termination of membership at the expiration of term of Samut Prakarn Provincial Administrative Organization on 4th February B.E. 2547 (2004). The respondent was under a duty to submit an account of assets and liabilities of himself, his spouse and children who had not yet become *sui juris* to the applicant within thirty days on every occasion of taking office, leaving office and the expiration of one year after leaving such office, making a total of three submissions, under section 4(9), section 32 and section 33 of the Organic Act on Counter Corruption and the Notification of the National Counter Corruption Commission. It appeared that the respondent had made only two submission of accounts, the submission for the occasion of taking office was made on 28th February B.E. 2543 (2000) and the submission for the occasion of leaving office was made on 24th March B.E. 2547 (2004). As for the occasion of the expiration of one year after leaving

* Published in the Government Gazette Vol. 125, Part 66a, 12th May B.E. 2551 (2008).

office, a submission had to be made within thirty days of 4th February B.E. 2548 (2005), but the respondent did not make any submission of account of assets and liabilities and supporting documents to the applicant within the period prescribed by law.

The applicant considered the matter in meeting no. 39/2550, held on 29th May B.E. 2550 (2007), and passed a unanimous resolution that the respondent intentionally failed to submit an account of assets and liabilities and supporting documents to the applicant within the period prescribed by law for the occasion of the expiration of one year after leaving the office of member of Samut Prakarn 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). A ruling was therefore requested from the Constitutional Tribunal.

After consideration, the Constitutional Tribunal held that the 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. 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 matter was therefore admitted for trial and adjudication. Pending proceedings on this application, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated, wherein section 300 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.

The respondent submitted a statement in reply to the allegations, dated 5th September B.E. 2550 (2007), to the Constitutional Court. The reply statement could be summarized as follows. The respondent had submitted accounts of assets and liabilities and supporting documents to the application on only two occasions, namely the occasion of taking office and the occasion of leaving office. On the occasion of the expiration of one year after leaving office, however, the respondent did not make a submission because at the expiration of his office term, the respondent was re-elected as a member of Samut Prakarn Provincial Administrative Organization Assembly for a second consecutive term and submitted an account on the re-taking of office. The respondent was thus mistaken in his belief that he was not required to submit an account on the occasion of the expiration of one year after leaving office since there were insignificant changes in assets and liabilities. Moreover, the respondent was sued in bankruptcy proceedings, and therefore he had to wait for the creditors to notify the receiver of the debt amounts, which would thereafter be held as the amount of debts owed by the respondent to third parties.

2. Issue Considered by the Constitutional Court

The Constitutional Court held that the issue which had to be decided was whether or not the respondent intentionally failed to submit an account of assets and liabilities and supporting documents on the occasion of 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).

Section 32 of the Organic Act on Counter Corruption B.E. 2542 (1999) provided that a political position holder had to submit an account of assets and liabilities of himself/herself, his/her spouse and children who had not yet become *sui juris* as actually existing at the date of account submission together with supporting documents. The provisions of section 33 provided for a timeframe for submission of accounts by political position holders, under which three submissions must be made, i.e. the first submission on the occasion of taking office, the second submission on the occasion of leaving office and the third submission on the occasion of the expiration of one year after leaving office. The rules and procedures, as well as the timeframe, under section 32 and section 33 required an undertaking 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. A political position holder was under a duty to submit an account on all occasions prescribed by law. The respondent's argument that he did not have the intention of not submitting an account, but had misunderstood that once an account had been submitted on the occasion of re-taking office, which was a consecutive period, he did not have to submit an account on the occasion of the expiration of one year after leaving office since there were no significant changes in the respondent's assets and liabilities, was therefore unsustainable.

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that Mr. Pongsak Maliyaem, the respondent, intentionally failed to submit an account of assets and liabilities and supporting documents on the occasion of the expiration of one year after leaving office and was therefore prohibited from holding any political position for a period of five years as of 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).
