

Summary of the Constitutional Court Ruling* No. 2/2554 (2011)

Dated 11th February B.E. 2554 (2011)

Re: The President of the Senate referred a matter of the Election Commission to the Constitutional Court for a ruling on whether or not the membership of Mr. Ittipol Ruengworaboon, senator, terminated under section 119(4) in conjunction with section 115(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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1. Summary of background and facts

The President of the Senate referred a matter of the Election Commission to the Constitutional Court for a ruling on whether or not the membership of Mr. Ittipol Ruengworaboon, the respondent senator, terminated under section 119(4) in conjunction with section 115(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The facts in the application and supporting documents could be summarized as follows.

The Election Commission held a selection of senators on 2nd January B.E. 2551 (2008) pursuant to the Notification of the Election Commission Re: Determination of Date for Selection of Senators, dated 10th October B.E. 2550 (2007). In the selection, the Senator Selection Committee selected the respondent, who was nominated by bodies in other sectors. On 19th February B.E. 2551 (2008), the Election Commission announced the senator selection results, which stated the respondent as a senator. Thereafter, there was a call for an election of the Mayor for Srisongkram Sub-District Municipality, Srisongkram District, Nakhon Phanom Province. The election was held on 20th September B.E. 2552 (2009). Mr. Yutthana Ruengwaraboon, the respondent's son, was elected to become the Mayor for Srisongkram Sub-District Municipality pursuant to the Notification of the Election Commission Re: Result of Elections for Srisongkram Sub-District Municipality Mayor, Srisongkram District, Nakhon Phanom Province, dated 14th October B.E. 2552 (2009).

Mr. Wattana Wadeesirisak, an eligible voter and citizen of Nakhon Phanom Province, submitted a complaint to the Chairman of the Election Commission, dated 11th November B.E. 2552 (2009), stating that the respondent was the ascendant of Mr. Yutthana Ruengwaraboon, Mayor for Srisongkram Sub-District Municipality, Srisongkram District, Nakhon Phanom Province, who was a political office holder. It was therefore asserted that the said person lacked qualifications and possessed a disqualification under section 115(5)

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of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). In the consequence, the respondent's membership terminated under section 119(4) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Election Commission considered the summary of inquisitorial proceedings undertaken by the inquisitorial committee as well as relevant evidence and gave the following decision in meeting no. 39/2553 (2010) on 7th April B.E. 2553 (2010). As it appeared on the facts that the respondent was the ascendant of Mr. Yuttana Ruengwaraboon, Mayor for Srisongkram Sub-District Municipality, Srisongkram District, Nakhon Phanom Province, who was a political office holder, the respondent therefore possessed a disqualification under section 115(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), causing the respondent's membership of the Senate to terminate under section 119(4) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The matter was to be referred to the applicant for submission to the Constitutional Court for a ruling on the respondent's membership pursuant to section 91 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the Constitutional Court could admit this application for a ruling pursuant section 91 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

The Constitutional Court, after deliberations, held that this case was in accordance with section 91 paragraph three of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in conjunction with article 17(3) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore had the power to admit this application for ruling.

3. Reply statement

The Constitutional Court instructed the respondent to submit a reply to the allegations. The respondent submitted a reply along with supporting documents, which could be summarized as follows:

1. The respondent conceded that Mr. Yuttana Ruengwaraboon, his son, was elected to the office of Mayor for Srisongkram Sub-District Municipality, Srisongkram District, Nakhon Phanom Province, being an office in a local administrative organization, subsequent to the respondent's selection to the senatorial office.

2. The respondent gave an explanation of the principles and reasons for the source of senators, stating that the previous Constitution had provided for the appointment of senators, but due to subsequent widespread political and corruption scandals, a political reformation took place. In the consequence, the Constitution of the Kingdom of Thailand B.E. 2540

(1997) provided for the direct election of senators by the people so as to enable senators to truly be direct representatives of the people. However, upon the promulgation of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), it was found that senators were not independent, and were interfered by the Executive Branch. These events led to the enactment of section 115(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and the prescription of 2 sources of senators, namely elected senators and selected senators, as provided under section 111 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

3. The senatorial functions provided by the Constitution of the Kingdom of Thailand showed that the Constitution intended for the Senate to carry out the principal functions of scrutiny and inspection of the Executive Branch and to remove political office holders, especially section 270 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Constitution, however, did not empower the Senate to remove local administrators. Although the Constitution provided for the power to remove “high-ranking officials” as provided under the Organic Act on Anti-Corruption B.E. 2542 (1999), an examination of section 4 of such Organic Act would reveal that those provisions did not incorporate the Mayor of a Sub-District Municipality as a high-ranking official within the definition of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). Thus, senatorial functions had no connection whatsoever to the office of a local administrator.

4. Upon an examination of Chapter 14, Local Administration, of the Constitution of the Kingdom of Thailand B.E. 2550 (2007), especially section 281 and section 285, in conjunction with section 17 of the Municipality Act B.E. 2496 (1953), the following findings could be made. The Senate had no direct or indirect functions pertaining to the inspection of administration by local administrators. The powers and duties pertaining to the inspection of municipal functions vested in the Provincial Governor and District Chief. In any event, powers of the Provincial Governor and District Chief were limited to the supervision the Municipality’s exercise of functions in compliance with the law. As regards other powers, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided for independence in the administration of local administrative organizations. It was not only the Senate, but also the Government which did not have any control. The interpretation of the term “or political office holder” under section 115(5) of the Constitution must therefore adhere to the legal principle of *ejusdem generis*, i.e. a general term used to describe a provision, if interpreted narrowly elsewhere, could not be interpreted widely due their generic congruency. In other words, section 115(5) applied to political office holders and high-ranking office holders, being the same meaning for members of the House of Representatives. The respondent’s son, however, merely held the office of a local administrator, being of a different nature from a member of the House of Representatives due to their completely different functions. Also, a local administrator did not have any involvement with the Legislative or Executive Branch. It was therefore concluded that the respondent’s son, holder of a mayoral office for a municipality, was not within the definition of the term “political office holder” as stated in the ruling of the Election Commission.

4. The issues considered by the Constitutional Court

The Constitutional Court found as follows. Section 115(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) provided that “a person having the following qualifications and not having the disqualifications shall be eligible for election candidacy or nomination for selection as a senator... (5) not being an ascendant, spouse or child of a member of the House of Representatives or political office holder.” The Constitution did not provide a clear definition for the term “political office holder”. However, regard could be had to the other provisions of the Constitution Section 259 provided that “holders of the following political offices shall be under a duty to submit an account of assets and liabilities of oneself, one’s spouse and children who have not yet become sui juris to the National Anti-Corruption Commission upon every occasion of taking office or vacating office... (6) local administrators and members of local assemblies as provided by law.” Section 115(9) provided that a person not having the following disqualifications shall be eligible for election candidacy or nomination for selection as a senator, “(9) not being a Minister or holder of other political office, not including a member of a local assembly or local administrator, or having held such an office but less than five years has lapsed since the vacation of office.”

Although the Constitution of the Kingdom of Thailand B.E. 2550 (2007) did not specifically define the term “political office holder”, but after having regard to the provisions of the Constitution together with the laws on state administration currently in force, a finding could be made that the term political office referred to an office vested with the powers and duties to determine policies and oversight of state administration, whether that might be the central, provincial or local administration, including municipalities. The office of a Municipal Mayor was elected by the citizens residing in such municipality. The office entailed the exercise of powers and duties at the policy and oversight levels for the local administration of the municipal area. Thus, the office constituted a type of political office. In addition, a further examination of all the constitutional provisions in section 115 would provide an alternative finding that the office of a local administrator and member of a local assembly, including the administrator of a Sub-District Municipality, was also within the definition of the term political office holder. Section 115(9) provided another disqualification for the senatorial office, stating that a senator must not be a Minister or other political office holder, not including membership of a local assembly or office of a local administrator, or had held such an office but a period of less than five years had lapsed since the vacation of office. This showed that the office of a local administrator or membership of a local assembly was a type of political office, but was not intended for inclusion in the disqualification under section 115(9). A separate disqualification was specifically provided instead. Therefore, the holder of a mayoral office for a Sub-District Municipality was therefore a political office holder under section 115(5) of the Constitution and no exception was provided such was the case of section 115(9).

As for the respondent’s objection that interpretation of the term “political office holder” in section 115(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) had to

assign a comparable definition to the term “holder of the office of member of the House of Representatives” which were preceding terms, such an approach could not be followed. The legal interpretation rule of *eiusdem generis* only applied to a term having a general meaning which followed two or more terms having specific meanings. The rule could not be applied in the case where there was only one preceding specific term such as in section 115(5).

Also, upon examining the constitutional provisions on the recruitment of senators, review of the exercise of state powers and acts of conflicts of interests, it was found that the intent in prescribing the qualifications of election candidates or nomination candidates for selection to become senators was to correspond to the problems arising from the performance of functions by senators and the review of exercises of state powers, which might be subject to domination by persons within the family, e.g. ascendants, spouse or descendants. This was to ensure that the senatorial functions were carried out impartially, transparently and free from intervention. Senators would thereby be able to truly perform functions independently. Hence, the term “political office holder” pursuant to such provisions had to be consistent with the constitutional intents. Even though the functions of a senator under the provisions of the Constitution did not enable the exercise of any direct control over the operations or removal of a mayor, there remained the possibility of interference or intervention in the discharge of official functions or routine operations of the local administration or local government organization for the direct or indirect benefit of oneself or of others.

The Constitutional Court additionally found that section 4 of the Administration of the State Act B.E. 2534 (1991) provided for the organization of state administration in 3 levels, viz. the central administration, regional administration and local administration. It could therefore be inferred that local administration was included in the administration of the state. An office holder whose function was to provide services or control local administration, namely local administrator and members of the local assembly, were thus within the meaning of the term “political office holder” under section 115 of the Constitution.

The respondent raised an argument in an objection that section 259(6) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) stated that local administrators and local assembly members who were “political office holders” had to be local administrators and local assembly holders as provided by law. In this regard, section 4 of the Organic Act on Anti-Corruption B.E. 2542 (1999) provided that “political office holder means... (9) a local administrator or local assembly member of a local administrative organization having revenues or a budget of not less than the threshold prescribed by the National Anti-Corruption Commission by a Notification published in the Government Gazette.” It was found that such a provision merely provided the extent to which political office holders in the local administrations having revenues at the level provided under the Constitution were under a duty to submit accounts of assets and liabilities to the National Anti-Corruption Commission. There was a need to prescribe a revenue threshold for local administrative organizations as a determining factor for the duties of local administrators and members of local assemblies to submit accounts of assets and liabilities due to the large number of local administrative organizations. Such a prescription of revenue threshold for local government organizations

was only intended to correspond to the personnel and workload of the Office of the National Anti-Corruption Commission. Moreover, the prescription of revenue threshold of local government organizations could be altered at any time by a Notification of the Anti-Corruption Commission. This did not mean that the holder of an office not within such criteria for the submission of an account of assets and liabilities was not a political office holder.

Upon a finding of facts that the respondent, a senator, was the ascendant of Mr. Yuttana Ruengwaraboon, Mayor for Srisongkram Sub-District Municipality, a local administrator and political office holder, the respondent therefore possessed a disqualification under section 115(5) of the Constitution causing his membership of the Senate to terminate under section 119(4) of the Constitution as from the day of occurrence of the cause for disqualification of the respondent under section 115(5) of the Constitution, i.e. the day Mr. Yuttana Ruengwaraboon, the respondent's son, was elected to the office of Mayor for Srisongkram Sub-District Municipality, Srisongkram District, Nakhon Phanom Province.

5. Ruling of the Constitutional Court

The Constitutional Court held that Mr. Ittipol Ruengworaboon, the respondent, possessed a disqualification under section 115(5) of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) thereby causing his membership of the Senate to terminate under section 119(4) of the Constitution as from the day of occurrence of the cause for disqualification under section 115(5) of the Constitution, i.e. the day Mr. Yuttana Ruengwaraboon, the respondent's son, was elected to the office of Mayor for Srisongkram Sub-District Municipality, Srisongkram District, Nakhon Phanom Province.
