



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 13-14/2541* Dated 12th November B.E. 2541 (1998)

Re : The President of the Senate and the President of the House of Representatives referred the opinion of senators and members of the House of Representatives which stated that the Cooperatives Bill, B.E. and the State Enterprise Labour Relations Bill, B.E. were unduly enacted under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling.

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The President of the Senate referred the opinion of 127 senators, according to the list annexed to this ruling, which stated that the Cooperatives Bill, B.E. and the State Enterprise Labour Relations Bill, B.E. had been unduly enacted under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the President of the House of Representatives referred the opinion of 66 members of the House of Representatives, according to the list annexed to this ruling, which stated that the Cooperatives Bill, B.E. had been unduly enacted under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), to the Constitutional Court for a ruling under section 262 (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the Cooperatives Bill, B.E. referred to the Constitutional Court for ruling by the President of the Senate and the President of the House of Representatives contained the same points of laws and facts, and the State Enterprise Labour Relations Bill, B.E. contained points of laws and facts of the same nature as the Cooperatives Bill, B.E. The two applications were therefore considered in one case.

According to the documents submitted by the President of the Senate and the President of the House of Representatives, the following facts were stated.

* Published in the Government Gazette, Vol. 115, Part 97a, dated 24th December B.E. 2541 (1998).

1. Cooperatives Bill, B.E.

The House of Representatives passed a resolution on 11th March B.E. 2541 (1998) to approve the Cooperatives Bill, B.E. submitted by the Council of Ministers and members of the House of Representatives. The Bill was forwarded to the Senate pursuant to the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Senate considered such a Bill on 17th July B.E. 2541 (1998) and passed a resolution to amend the Bill under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The amendments were made in order to improve the Bill which contained certain provisions on the restriction of rights and liberties recognized by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) but did not mention the provisions in the Constitution which authorised their enactment pursuant to section 29 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The preamble of the Bill was thus amended as follows:

“Whereas it is expedient to modify the law on cooperatives in order to promote, support and protect the cooperatives system which is an Act containing certain provisions in relation to the restriction of the liberty to form a cooperative or farmer group in order to protect the common interest of the people and to prevent an economic monopoly which section 45 of the Constitution of the Kingdom of Thailand allowed to be done by enacting an Act.”

When the House of Representatives received such a Bill from the Senate, the House of the Representatives met on 29th July B.E. 2541 (1998) and passed a resolution disapproving of the amendments made by the Senate. A Joint Committee was established to consider the Bill under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Subsequently, the Joint Committee finished its consideration of the Bill and submitted a report and the Bill to both Houses of the National Assembly, i.e. the House of Representatives and the Senate. The result of the consideration was that the Joint Committee agreed with the amendments made by the Senate and further amended the preamble as follows:

“Whereas it is expedient to modify the law on cooperatives which is an Act containing certain provisions relating to the restriction of rights in dwelling and the restriction of liberty to form a cooperative or farmer group, which section 35 and section 45 of the Constitution of the Kingdom of Thailand allow to be done by virtue of law”

When the Senate and the House of Representatives received the Cooperatives Bill, B.E. and the report submitted by the Joint Committee, the Senate passed a resolution on 25th September B.E. 2541 (1998) approving the Cooperatives Bill, B.E. presented by the Joint Committee, but the House of Representatives passed a resolution on 30th September B.E. 2541 (1998) disapproving of the Cooperatives Bill, B.E. presented by the Joint Committee. As a result, the Cooperatives Bill, B.E. was withheld under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the Cooperatives Bill, B.E. was a money Bill, the House of Representatives exercised powers under section 176

paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to reconsider the Bill on 7th October B.E. 2541 (1998) and passed a resolution to reaffirm the original Bill of the House of Representatives by 213 votes, which was more than one-half of the total number of the existing members of the House of Representatives. However, as the original Bill of the House of Representatives did not contain a reference to the provisions of the Constitution which authorised the enactment of law to restrict the rights and liberties of a person, which would have been inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the House of Representatives therefore passed a resolution on the same day by a majority vote to amend section 3 bis, later renumbered to section 4, to read as follows, “this Act is a law containing certain provisions on the restriction of liberty in dwelling and the restriction of the liberty to form a cooperative or farmer group, which has been enacted by virtue of section 35 and section 45 of the Constitution of the Kingdom of Thailand.”

2. State Enterprise Labour Relations Bill, B.E.

The House of Representatives passed a resolution on 19th February B.E. 2540 (1997) approving of the State Enterprise Labour Relations Bill, B.E. submitted by the Council of Ministers and members of the House of Representatives. The Bill was forwarded to the Senate for consideration pursuant to the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Senate considered such Bill on 8th August B.E. 2540 (1997) by passing a resolution to make amendments under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The amended Bill was returned to the House of Representatives. In due course, on 20th August B.E. 2540 (1997), the House of Representatives considered the Bill as amended by the Senate and passed a resolution disapproving of the amendments made by the Senate. A Joint Committee was established to consider such Bill under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Upon the completion of consideration of the Bill by the Joint Committee, a report and the considered Bill were submitted to both Houses of the National Assembly. The Senate passed a resolution on 7th November B.E. 2540 (1997) approving of the Bill submitted by the Joint Committee. The House of Representatives, however, passed a resolution on 7th January B.E. 2541 (1998) disapproving of the Bill submitted by the Joint Committee. As a result, the State Enterprise Labour Relations Bill, B.E. was withheld under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the Bill was not a money Bill, the House of Representatives had to wait for the lapse of one hundred and eighty days before the House of Representatives could reconsider the Bill under section 176 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). After the lapse of one hundred and eighty days, on 8th October B.E. 2541 (1998), the House of Representatives exercised powers under section 176 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to reconsider the State Enterprise Labour Relations Bill, B.E. and passed a resolution reaffirming the original Bill of the House of Representatives with the votes of more than one-half of the existing members of the

House of Representatives. However, as the original State Enterprise Labour Relations Bill, B.E. of the House of Representatives did not contain a reference to the provisions of the Constitution which authorised the enactment of a law to restrict the rights and liberties of a person, which would have been unlawful under section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the House of Representatives therefore passed a resolution on the same day by a majority vote to add the provisions in section 3 bis, later renumbered to section 4, which stated that “this Act is a law containing certain provisions on the restriction of liberty in dwelling and the restriction of liberty in forming an association, a union, league, cooperative, farmer group, private organization or any other group, which has been enacted by virtue of section 35 and section 45 of the Constitution of the Kingdom of Thailand.”

The Office of the Secretariat of the House of Representatives thereafter referred the Cooperatives Bill, B.E. which the House of Representatives added section 4 to its original Bill to the Secretary-General of the Council of Ministers in order for the Prime Minister to proceed under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court considered the opinions of the senators and the members of the House of Representatives above and held that the following issues had to be considered:

1. whether or not the House of Representatives’ addition of section 4 of the Cooperatives Bill, B.E. subsequent to the House of Representatives resolution to reaffirm the original Bill of the House of Representatives under section 176 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) rendered the Cooperatives Bill, B.E. as unduly enacted under the provisions of the Constitution and lapsed under section 262 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997);

2. whether or not section 121 of the Cooperatives Bill, B.E. was contrary to or inconsistent with section 45 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997);

3. whether or not the House of Representatives’ addition of section 4 to the State Enterprise Labour Relations Bill, B.E. subsequent to the House of Representatives resolution to reaffirm the original Bill of the House of Representatives under section 176 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) rendered the State Enterprise Labour Relations Bill, B.E. as unduly enacted under the provisions of the Constitution and lapsed under section 262 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

On the first issue, section 92 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided on the process of enactment of an Act that a Bill may be enacted as

law only by and with the advice and consent of the National Assembly. Section 90 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that the National Assembly consisted of the House of Representatives and the Senate. Section 169 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that a Bill could be introduced only by members of the House of Representatives or the Council of Ministers, but a money Bill could be introduced by members of the House of Representatives only with the endorsement of the Prime Minister. Section 172 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that a Bill should be first submitted to the House of Representatives. When the House of Representatives has considered a Bill, the House of Representatives should submit such Bill to the Senate and the Senate must finish the consideration of such Bill within the time limit under section 174 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). If the Senate did not finish the consideration of the Bill within the period above, it would be deemed that the Senate had given its approval. Thereafter, under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Prime Minister would present the Bill to the King for signature within twenty days as from the date of receipt of such Bill from the National Assembly. However, if the Senate finished its consideration of the Bill submitted by the House of Representatives within the time limit, section 175 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) applied, i.e.

(1) if it agreed with the House of Representatives, further proceedings under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) should be taken;

(2) if it disagreed with the House of Representatives, such Bill would be withheld and returned to the House of Representatives;

(3) if there was an amendment, the amended Bill should be returned to the House of Representatives. If the House of Representatives approved such amendment, further proceedings under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) should be taken. In other cases, each House should appoint persons, being or not being its members, in such an equal number as may be fixed by the House of Representatives, to constitute a Joint Committee for considering the Bill and the Joint Committee should prepare a report thereon and submit the Bill which it had considered to both Houses. If both Houses approved the Bill already considered by the Joint Committee, further proceedings under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) should be taken. If either House disapproved it, the Bill should be withheld.

A Bill withheld under section 175 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) could be reconsidered by the House of Representatives only after the lapse of one hundred and eighty days as from the date the Bill was returned to the House of Representatives by the Senate in case of withholding under section 175 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and as from the date either House disapproved it in the case of withholding under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, if the Bill withheld was a money Bill,

the House of Representatives could forthwith proceed to reconsider it under section 176 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In the case where the House of Representatives reconsidered a Bill under section 176, regardless of whether or not it was a money Bill, if the House of Representatives passed a resolution to reaffirm its original Bill or the Bill considered by the Joint Committee by the votes of not less than one-half of the existing members of the House of Representatives, such Bill would be deemed to have been approved by the National Assembly and further proceedings under section 93 would be taken.

Under section 176 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case where the House of Representatives reconsidered a withheld Bill, the House of Representatives could only pass a resolution in either of the two ways, namely, to reaffirm the original bill or reaffirm the Bill considered by the Joint Committee. The reaffirmation of the House of Representatives' original Bill meant the reaffirmation of the exact original Bill which the House of Representatives submitted to the Senate. The result of such a reaffirmation under section 176 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) was that such Bill would be deemed to have been approved by the National Assembly and further proceedings under section 93 should be taken.

As regards, the House of Representatives' resolution to reaffirm the Cooperatives Bill, B.E., which was the House of Representatives' original Bill, by the votes of more than one-half of the existing members of the House of Representatives followed by a resolution by a majority vote on the same day to add the provision in section 3 bis, later renumbered to section 4, in order to state the provisions of the Constitution which authorised the enactment of a law to restrict the rights and liberties of a person recognized by the Constitution under section 29 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), such added provision had not been considered by the Senate. Thus, it could not be deemed that such Bill had been approved by the National Assembly as section 90 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) stated that the National Assembly consisted of the House of Representatives and the Senate.

The House of Representatives' addition of section 4 subsequent to the reaffirmation of the original Bill by the House of Representatives was an undue enactment of a law under section 176 in conjunction with section 93, section 92 and section 90 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the Cooperatives Bill, B.E. was unduly enacted under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the entire Cooperatives Bill, B.E. lapsed under section 262 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue regarding whether or not section 121 of the Cooperatives Bill, B.E. was contrary to or inconsistent with section 45 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), as the Constitutional Court held on the first issue that the Cooperatives Bill, B.E. had been unduly enacted under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which resulted in the lapse of the entire Bill

under section 262 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), it was not necessary to rule on the second issue.

On the third issue, the House of Representatives' resolution by a majority vote to add section 4 subsequent to the House of Representatives' resolution to reaffirm the House of Representatives' original Bill was an undue enactment of a law under the provisions of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Thus, the entire State Enterprise Labour Relations Bill, B.E. lapsed under section 262 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) for the same reasons as the Cooperatives Bill, B.E.

By virtue of the reasons considered above, the Constitutional Court held that the Cooperatives Bill, B.E. and the State Enterprise Labour Relations Bill, B.E. were unduly enacted under the provisions of the Constitution. Such two Bills therefore lapsed under section 262 paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
