

Summary of the Constitutional Court Ruling No. 4/2542

Dated 1st April B.E. 2542 (1999)*

Re: The Songkhla Provincial Court referred the objection of the defendant (Mr. Kreingsak Saelao) to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

Songkhla Provincial Court referred the objection of the defendant (Mr. Kreingsak Saelao), the applicant, to the Constitutional Court for a ruling on whether the Notification fixing the highest interest rate issued by the plaintiff (Padangbeza Branch of Thai Commercial Bank Public Company Limited) by virtue of the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993), which it was applied to charge the interest on the defendant and was to be applied in the case by the Court, was contrary to or inconsistent with section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Under the application, the applicant objected that the plaintiff charged interest against him by virtue of the term of contract. The agreement made at the time of entering into contract was that the plaintiff applied the Notification fixing highest interest rate which was 16.25 percent per annum and 17.50 percent per annum in the case of default, and that the interest rate could be altered from time to time by the notification of the plaintiff. The applicant was of the opinion that the Notification fixing the highest interest rate of the plaintiff issued by virtue of the Notification of the Bank of Thailand prescribing commercial bank practices in relation to interest rates and discounts was illegal and contrary to the Prohibition of Usury Act, B.E. 2475 (1932). Therefore, the applicant submitted the application to the Constitutional Court for a ruling that the Notification fixing the highest interest rate issued by the plaintiff by virtue of the Notification of the Bank of Thailand, which was applied to charge interest on him and to be applied in the case by the Court, was contrary to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and violated the Prohibition of Usury Act, B.E. 2475 (1932).

* Published in the Government Gazette, Vol. 116, Part 49a, dated 18th June B.E. 2542 (1999).

2. The issues considered by the Constitutional Court

Were the Thai Commercial Bank Public Company Limited Notification fixing the highest interest rate and the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993), the provisions of law under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held the following opinion:

The Thai Commercial Bank Public Company Limited Notification fixing the highest interest rate was issued by Thai Commercial Bank Public Company Limited in order to be in accordance with the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) which was issued by the Governor of the Bank of Thailand by virtue of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E.2522 (1979). The Notification of Thai Commercial Bank Public Company Limited was not issued by a State authority; it was therefore not an administrative notification. Hence, the Notification of Thai Commercial Bank Public Company Limited was not a provision of law which the Constitutional Court could consider.

As regards the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993), this Notification was issued by the Governor of the Bank of Thailand with the approval of the Minister of Finance by virtue of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979). It was applicable within the scope of powers in the primary Act. However, this Notification of the Bank of Thailand was not issued by an organ exercising legislative power. It was therefore not the provision of law under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The issue on whether the Notification of the Bank of Thailand, Re: Prescribing commercial bank practices in relation to interest rates and discounts, dated 20th October B.E. 2536 (1993) to be applied in the case by the Court of Justice was contrary to or inconsistent with section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which was raised by the applicant for the Constitutional Court ruling, was therefore outside the powers of the Court to consider.

3. Ruling of the Constitutional Court

By reasons stated above, the Constitutional Court dismissed the application.
