

Summary of the Constitutional Court Ruling No. 44/2542

Dated 3rd August B.E. 2542 (1999)*

Re : Nakhon Sawan District Court referred the opinions of parties who objected that Sukhapibal Act, B.E. 2495 (1952) was inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling.

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1. Background and summarized facts

The facts summarized by the Nakhon Sawan District Court stated that Mrs. Bang-orn Sakolvitayanon, in her personal capacity and her capacity as President of the Sukhapibal Committee for Chong Khae, Amphoe Takhli, Nakhon Sawan Province, filed an application to the Nakhon Sawan District Court requesting for a Court Order to expel Mr. Somkiart Kongthim (the applicant) from his office as member of the Sukhapibal Committee for Chong Khae, Amphoe Takhli, Nakhon Sawan Province by reason of his ordination to become a Buddhist priest. Mrs. Bang-orn Sakolvitayanon argued that there was a cause for vacation of office under section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) and that the applicant had continued to perform duties despite his lack of powers. Thereafter, the applicant submitted an objection to the Nakhon Sawan District Court requesting that the Court refer an opinion to the Constitutional Court for a ruling that section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) was inconsistent with section 29 and section 38 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The Constitutional Court held that this was a case under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and therefore accepted the application for consideration.

3. The issues considered by the Constitutional Court

The issue considered was whether or not section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) was inconsistent with section 29 and section 38 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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The Constitutional Court held the following opinion:

(1) Section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) stated that a member of the Sukhapibal Committee under section 7 (4) vacated office for lack of qualifications or for being under a prohibition from applying as an election candidate as provided by the law on election of members of the Municipal Council. Section 21 (8) of the Act on Election of Members of the Municipal Council, B.E. 2482 (1939) stated the characteristics of a person prohibited from become a candidate as those person who possessed prohibited characteristics under section 18 (1), section 18 (2), section 18 (3) or section 18 (5) of the Act on Election of Members of the Municipal Council, B.E. 2482 (1939). A person who was disfranchised under section 18 (3) of the Act on Election of Members of the Municipal Council, B.E. 2482 (1939) was a Buddhist priest, novice, monk or clergy. Similar provisions were made in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and other laws. Section 118 (5) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), for example, provided that the membership of a member of the House of Representatives terminated upon the occurrence of an incident under section 109 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. a disfranchised person having a characteristic prohibiting him or her to exercise the right to vote for a member of the House of Representatives under section 106 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. being a Buddhist priest, novice, monk or clergy. The Constitution of the Kingdom of Thailand, B.E. 2540 (1997) also contained similar provisions for the termination of membership of senators in section 133 (5) in conjunction with section 126 (4), section 109 (3) and section 106 (2) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As regards local administrative organisations, similar provisions were made in the Act on Tambon Council and Tambon Administrative Organisation, B.E. 2537 (1994) and the Act on Rules on the Administration of Bangkok Metropolitan, B.E. 2528 (1985). Therefore, the prohibition which was the cause for the vacation of office of the member of the Sukhapibal Committee, i.e. becoming a Buddhist priest, novice, monk or clergy, were similar prohibitions which also constituted causes for the termination of the offices of members of the House of Representatives and senators as provided by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) As for the issue related to section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Constitutional Court held that the provision of section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) laid down the principle of the protection of the people's rights and liberties. Restrictions of rights and liberties could only be restricted as an exception. The provision intended to limit the exercise of State powers more than to empower the restriction of rights and liberties of a person. Section 29 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) also stated that the provision of the Constitution which authorised such an enactment should be mentioned. However, as section 335 (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided for the exception that the provisions of section 29 paragraph two and paragraph three of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) should not apply to

a law in force at the date of promulgation of this Constitution, and the Sukhapibal Act, B.E. 2495 (1952) was in force at the date of promulgation of this Constitution, by virtue of section 335 (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the provisions of section 29 could not be relied upon to argue that section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) was a provision which restricted the rights and liberties of a person recognised by the Constitution regardless of whether or not such an Act contained any provision which restricted the rights and liberties of a person. As a result, section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) was neither contrary to nor inconsistent with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(3) Section 38 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) recognised the liberty of a person to profess a religion, a religious sect or creed, and observe religious precepts or exercise a form of worship in accordance with his or her belief; provided that it was not contrary to his or her civic duties, public order or good morals. Such a provision guaranteed the equality of rights and liberties for the Thai people. The provision in section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952), which stipulated that a Buddhist priest, novice, monk or clergy should vacate office as a member of the Sukhapibal Committee, did not cause such a person to lose his or her liberty to profess in a religion or exercise a form of worship in accordance with his or her belief. Such a liberty still existed, but once such a person held the position of member of the Sukhapibal Committee, he or she should be subject to the laws relating to capacity. In this regard, a person who was a Buddhist priest, novice, monk or clergy did not have the ability to perform the duties of a member of the Sukhapibal Committee similar to the restrictions on the members of the House of Representatives and senators under section 118 (5) and section 133 (5) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the restrictions on members of the armed forces, the police force, government official, State official, local official and officials or employees of State agencies under section 64 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As a result, section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) was not inconsistent with section 38 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 10 (4) of the Sukhapibal Act, B.E. 2495 (1952) was not inconsistent with section 29 and section 38 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
