

Summary of the Constitutional Court Ruling No. 48/2542

Dated 31st August B.E. 2542 (1999) *

Re : The President of the Senate referred the opinion of senators that the Rubber Control Bill, B.E. contained provisions inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to the Constitutional Court for a ruling.

.....

1. Background and summarized facts

The President of the Senate submitted a letter dated 18th March B.E. 2542 (1999) referring the opinion of senators that the Rubber Control Bill, B.E. was inconsistent with 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 facts could be summarised as follows. The House of Representatives gave its approval of the Rubber Control Bill, B.E. on 6th January B.E. 2542 (1999) and the Senate gave its approval on 5th March B.E. 2542 (1999). On 10th March B.E. 2542 (1999), the House of Representatives gave its consent to the amendments made by the Senate, hence the Bill was considered as having been approved by the National Assembly under section 175 (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, prior to the Prime Minister proceeding under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), 69 senators submitted a letter to the President of the Senate stating that even though the preamble of the Rubber Control Bill, B.E. mentioned that the law was enacted by virtue of section 48 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), such a Bill contained provisions which were inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In other words, section 7 (3) and section 7 (6) of the Rubber Control Bill, B.E., which empowered the Minister to issue a Notification to prescribe the boundaries of a rubber plantation and the operating methods of a rubber plantation in some areas, in conjunction with section 42 of the Rubber Control Bill, B.E., which empowered a competent official to enter a rubber plantation or rubber plant cultivation enclosure in order to inspect the area of the plantation, the method of operation, the quality of the rubber as well as the relevant documents and evidence to ensure compliance with such Bill, were provisions inconsistent with the exception in section 50

* Published in the Government Gazette, Vol. 116, Part 106a, dated 3rd November B.E. 2542 (1999)

paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In addition section 10 and section 42 of the such a Bill were also inconsistent with the agriculturalists' liberty to use land in order to maintain a living, engage in an enterprise or engage in an occupation under section 50 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The provisions of the Bill limited the liberties of an agriculturalist who operated a rubber plantation in operating under his or her own methods or in selecting the variety of rubber for planting or in researching and developing rubber planting techniques because he or she had to plant the rubber variety prescribed by the Minister in a Notification and he or she had to operate a rubber plantation under the method prescribed by the Minister in a Notification. If an agriculturalist intended to plant rubber or research rubber planting methods, he or she could be subject to an inspection by a competent official because the performance of duties under section 42 of the Rubber Control Bill, B.E. was not limited in its application to section 7 of the Rubber Control Bill, B.E. Aside from that, the penalties in section 48 and section 57 of the Rubber Control Bill, B.E., which penalised violators of section 10 and section 42 of the Rubber Control Bill, B.E., were provisions inconsistent with section 42, section 48 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. The issues considered by the Constitutional Court

The Constitutional Court held the following opinion:

The first issue considered was whether or not the provision in section 7 (3) and section 7 (6) (subsequently renumbered to section 6 (3) and section 6 (6)) of the Rubber Control Bill, B.E., which empowered the Minister to issue a Notification to prescribe the boundaries of a rubber plantation and the method of operating a rubber plantation in some areas, were in accordance with the exception provided in section 50 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

This Bill has the effect of providing a common protection for rubber plantation agriculturalists. Such a law was therefore enacted for the benefit of maintaining the economic security of the country because rubber was an essential economic plant. Production without any limits would send an impact on the economy. Such was a benefit to the economy as a whole. The Bill also provided another means of preventing trespassing of the conservation forest, which was a measure to conserve natural resources and the environment. The provision in section 6 (3) and section 6 (6) of the Rubber Control Bill, B.E. were in accordance with exception provided in section 50 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The second issue considered was whether or not the provision in section 10 (subsequently renumbered to section 9) of the Rubber Control Bill, B.E., which directed agriculturalists to plant the good variety of rubber prescribed by the Minister as suitable for cultivation in a Notification and to operate the rubber plantation under the method prescribed by the Minister in a Notification, was inconsistent with the liberty to engage in

an occupation under section 50 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Paragraph two of the preamble to the Rubber Control Bill, B.E., which stated that “whereas this Act contains certain provisions relating to the restriction of rights and liberties of a person which section 29 in conjunction with section 35, section 36, section 48 and section 50 of the Constitution of the Kingdom of Thailand allowed to be done by virtue of law,” constituted a statement that the law contained provisions which restricted the rights and liberties of a person. Even though there was an inconsistency with a person’s liberty to engage in an occupation under section 50 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), such a restriction of rights and liberties was done by virtue of law and only to the extent necessary. There was no effect on the essential substance of the rights and liberties. The case was in accordance with section 29 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Moreover, before the Minister could issue a Notification to prescribe the boundaries of rubber plantations or methods of operating a rubber plantation, the approval of a Committee had to be sought. The Committee’s composition included representatives of an agricultural institution which was a juristic person owning a rubber factory, owners of rubber product manufacturing plants and rubber traders. The Minister could not exercise his powers solely.

The third issue considered was whether or not the provision in section 42 (subsequently renumbered to section 41) of the Rubber Control Bill, B.E., which enabled a competent official to enter a rubber plantation in order to inspect the operation method, was a limitation of the academic freedom and a restriction of the property rights of others under section 42 and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The provision in section 41 of the Rubber Control Bill, B.E. was not subject to the application of section 6 (3), section 6 (6) and section 9 of the Rubber Control Bill, B.E. Thus, agriculturalists who intended to plant rubber or research on rubber varieties or develop rubber planting methods to improve plant varieties were able to do so because the law did not prescribe a licensing requirement. Moreover, the definition of “rubber plantation” did not include research. Academic freedom was intact. The provision in section 41 of the Rubber Control Bill, B.E. did not in any way reduce the academic freedom of any person. The allowance for a competent official to enter a rubber plantation, such as to inspect the area of the rubber plantation and the operation method of the rubber plantation to ensure compliance with the Bill, was made with the principal purpose of maintaining the appropriate production in accordance with the state and demands for production, trade and quality control. Although, the entry of a competent official in the rubber plantation constituted a restriction of the rights of a person in property, such a restriction was, however, in accordance with the exception in section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) which allowed the restriction to be done “as provided by law.” The competent official himself or herself could only exercise such powers to the extent provided by law, such as entry should only be made between dawn and

dusk or entry should only be made in a case where there was a reasonable belief that an offence had been committed.

The fourth issue considered was whether or not the penalties in section 48 and section 57 (subsequently renumbered to section 47 and section 56) of the Rubber Control Bill, B.E., which penalised a person who violated section 10 and section 42 (subsequently renumbered to section 9 and section 41) of the Rubber Control Bill, B.E., were inconsistent with section 42, section 48 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Even though section 9 and section 41 of the Rubber Control Bill, B.E. contained provisions which restricted the rights and liberties of a person, nevertheless, as the cases fell within the exceptions in section 50 paragraph two and section 48 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the penalties were necessary legal measures in order to render the provisions in section 6 (3), section 6 (6), section 9 and section 41 of the Rubber Control Bill, B.E. effective.

3. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 6 (3), section 6 (6), section 9, section 41, section 47 and section 56 of the Rubber Control Bill, B.E. did not contain any provision contrary to or inconsistent with section 42, section 48 and section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
