

Summary of the Constitutional Court Ruling No. 54/2542

Dated 28th December B.E. 2542 (1999)*

Re : The President of the National Assembly requested for a Constitutional Court ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case of a dispute on the appointment of judges to the Supreme Administrative Court.

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1. Background and summarized facts

The Prime Minister presented the list of nominations for selection as judges of the Supreme Administrative Court selected by the Committee for the Selection of Judges of the Supreme Administrative Courts under section 97 of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) to the Senate for approval. The Senate considered that section 277 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) clearly stated that the appointment and removal from office of an administrative judge had to be approved by the Judicial Commission of the Administrative Courts but the Act on Establishment of the Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) only provided that appointment would be made through the selection of a special ad hoc committee, dissimilar to provisions of the Constitution. The Senate therefore resolved to not accept such list of nominations for consideration and notified the Prime Minister accordingly. The Prime Minister considered that this was a case of dispute arising from problems on the powers and duties of organs under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). As the Senate did not refer the matter to the Constitutional Court for consideration, the Prime Minister submitted the matter to the President of the National Assembly to consider making a reference to the Constitutional Court together with an opinion for a ruling.

The President of the National Assembly held that this was a case on a dispute arising from the performance of duties of the Senate, which was an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and the Prime Minister. Such a dispute might cause a delay in the establishment of the Administrative Courts and fail to have the result intended by the Constitution. The President of the National Assembly found it necessary to exercise his powers under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) to submit the matter together with an opinion to the Constitutional Court for a ruling pursuant to the request of the Prime Minister.

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2. Preliminary issue

The Constitutional Court held that the Senate was an organ established and entrusted with a number of duties by the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and section 277 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) empowered the Senate to give its approval or disapproval of persons who were to take office as a judge of the Supreme Administrative Court. The exercise of the Senate's powers in such a case was therefore deemed as an exercise of powers in its capacity as an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

As regards the disputes relating to the powers and duties of various organs under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) as provided in section 266 of the Constitution, the case might bear the characteristics of a dispute on the powers and duties of organs under the Constitution on whether or not a certain organ under the Constitution possessed the power to act on any matter and to what extent, or there was a dispute on whether or not a certain organ under the Constitution had trespassed or impinged upon the powers and duties of another organ.

As for the Senate's resolution to not accept for approval or its disapproval of the list of nominations for appointment as judges of the Supreme Administrative Court and the Prime Minister had a query on the performance of duties by the Senate, such a case was a dispute arisen on the powers and duties of the Senate, which was an organ under the Constitution. When the President of the National Assembly, whom section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided as the referrer of a matter to the Constitutional Court for ruling, deemed that the case contained a dispute regarding the powers and duties of an organ under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and submitted such a matter together with an opinion to the Constitutional Court for ruling, the Constitutional Court accordingly had the power to accept such an application for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. The issue considered by the Constitutional Court

The Constitutional Court held that in order to rule on the issue in the case, the Constitutional Court found it necessary to rule on whether the provisions in section 97 and section 98 of the Act on Establishment of the Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999), were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). In this regard, the Constitutional Court possessed the power to make a ruling on whether or not a provision of law was contrary to or inconsistent with the Constitution as it had previously held in Ruling No. 4/2541 and Ruling No. 15/2541. After making such a ruling, the issues which had to be considered under the application were as follows.

1. Firstly, the Constitutional Court had to consider whether or not the Prime Minister's submission of a list of nominations for appointment as judges of the Supreme Administrative Court to the Senate for consideration and approval was constitutional.

2. Secondly, the Constitutional Court had to consider whether or not the Senate's resolution to not accept the list of nominations for appointment as judges of the Supreme Administrative Courts submitted by the Prime Minister was constitutional.

The Constitutional Court held the following opinion:

On the first issue, the Constitutional Court held that under section 277 and section 279 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the appointment of judges of the Supreme Administrative Court should have first of all received the prior approval of the Judicial Committee of the Administrative Court, which comprised of the President of the Supreme Administrative Court, qualified members who were judges of the Administrative Court and qualified members selected by the Senate and the Council of Ministers, before the list of nominations could be submitted to the Senate for approval. However, after a consideration of the composition of the thirteen members of the Judicial Committee in the Administrative Court under section 279 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), which comprised of judges of the Administrative Court, viz the President of the Supreme Administrative Court and nine qualified members who were judges of the Administrative Court forming ten of the thirteen members, the Constitutional Court held that the Judicial Committee in the Administrative Court could only be constituted by the President of the Supreme Administrative Court and administrative judges, regardless of whether they might be judges in the Administrative Court of First Instance or in the Supreme Administrative Court. When the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) did not clearly provide for the appointment of the first judges of the Administrative Courts or the Judicial Committee in the Administrative Courts, but only provided in section 277 paragraph one that "the appointment... of an administrative judge must be approved by the Judicial Commission of the Administrative Courts as provided by law..." and section 277 paragraph two that "qualified persons in the field of law or the administration of the State affairs may be appointed as judges of the Supreme Administrative Court... such appointment... must be approved by the Judicial Commission of the Administrative Courts as provided by law." In comparison, section 273 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided on the appointment of judges of the Courts of Justice that "the appointment and removal from office of judges of the Courts of Justice must be approved by the Judicial Commission of the Courts of Justice...". It could be observed that in relation to the approval of the Judicial Commission for the appointment of judges of the Courts of Justice, the constitutional provisions did not contain the words "as provided by law" because the transitory provision in section 318 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided for the first Judicial Commission of the Courts of Justice. On the contrary, as regards the Judicial Commission of the Administrative Courts, there was no provision for the first Judicial Commission of the Administrative Courts in the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) or in the transitory provisions.

Nevertheless, section 277 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) contained the terms “must be approved by the Judicial Commission of the Administrative Courts as provided by law.” Such provisions meant that section 277 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) empowered the National Assembly to enact laws relevant to the Judicial Commission of the Administrative Courts. According to the Minutes of the 23rd Meeting (Special Meeting) of the Constitutional Drafting Committee, during the consideration of the Constitutional Drafting Committee, on Monday, 21st July, B.E. 2540 (1997), there was a debate on the initial period of the establishment of the Administrative Courts, the judges of the Administrative Courts or the Judicial Commission of the Administrative Courts. The Committee stated that it was their desire to delegate this determination of procedures to the National Assembly.

Section 97 and section 98 of the Act on Establishment of the Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999) laid down procedures for the appointment of the first judges of the Supreme Administrative Courts. In this regard, section 97 of the said Act established a Committee for the Selection of Judges of the Supreme Administrative Courts to carry out the selection of not more than twenty-three persons before proceeding under section 98 of the Act on Establishment of the Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999) and the provisions of section 15 paragraph one was applied *mutatis mutandis*, i.e. the Prime Minister should submit the list of persons nominated by the Committee for the Selection of Judges of the Supreme Administrative Courts to the Senate within fifteen days as from the date of receipt thereof, and upon its approval, the Prime Minister had to tender the list to the King for royal appointment. Section 98 of the said Act also provided that upon the appointment by the King of judges of the Supreme Administrative Court, the duty of the Committee for the Selection of Judges of the Supreme Administrative Court lapsed. Section 97 and section 98 of the Act on Establishment of the Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), which provided for the procedures for obtaining the first judges of the Supreme Administrative Court was therefore neither contrary to nor inconsistent with section 277 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Therefore, the Prime Minister’s submission of the list of persons nominated by the Committee for the Selection of Judges of the Supreme Administrative Court under section 97 and section 98 of the Act on Establishment of the Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999) to the Senate for approval was an act in accordance with provisions of law which were neither contrary to nor inconsistent with section 277 and section 279 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On the second issue, the Constitutional Court held that once a ruling had been made on the first issue that the Prime Minister’s submission of list of persons nominated by the Committee for the Selection of Judges of the Supreme Administrative Court to the Senate for approval was an act in accordance with the provisions of law which were neither contrary to nor inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and as the ruling of the Constitutional Court was deemed as final and binding on the National

Assembly, the Council of Ministers, Courts and other State organs under section 268 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), the Senate therefore had to consider giving its approval under section 277 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and as provided by law.

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that the Prime Minister's submission of list of persons nominated by the Committee for the Selection of Judges of the Supreme Administrative Court to the Senate for approval was an act in accordance with the provisions of the Act on Establishment of the Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), which provisions neither contrary to nor inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
