

Summary of the Constitutional Court Ruling No. 34-53/2543

Dated 11th October B.E. 2543 (2000) *

Re : Is section 286 paragraph one subparagraph (3) of the Civil Procedure Code contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)? (Mr. Sathit Nakrintrsakorn and others, a total of 20 applications)

.....

1. Background and summarized facts

Taling Chan District Court referred the defendant's objection in Civil Case Judgment No. 668/2540 between Mr. Prachuab Jaroenuengfu, as plaintiff, and Mr. Sathit Nakrintrsakorn, as defendant (the applicant), and the Thon Buri Civil Court referred the objections of defendants in 19 other cases as follows:

- 1) Mr. Sathit Nakrintrsakorn was a defendant in 3 cases, namely:
 - 1.1 Civil Case Judgment No. 2765/2539 with Mr. Narongchai Trakulsuksan as plaintiff;
 - 1.2 Civil Case Judgment No. 4767/2540 with Mrs. Pornthip Phimolrat as plaintiff;
 - 1.3 Civil Case Judgment No. 4780/2540 with Mr. Nak Thanaphongtham as plaintiff.

- 2) Mrs. Wimol Kaenkaew was a defendant in 3 cases, namely:
 - 2.1 Civil Case Judgment No. 4870/2540 with Mrs. Suwari Pradapthong as plaintiff;
 - 2.2 Civil Case Judgment No. 7688/2540 with Mr. Wanchai Watcharamongkol as plaintiff;
 - 2.3 Civil Case Judgment No. 8216/2540 with Mr. Nak Thanaphongtham as plaintiff.

- 3) Mr. Banjong Srikalong was a defendant in 3 cases, namely:
 - 3.1 Civil Case Judgment No.7595/2539 with Mr. Wanchai Watcharamongkol as plaintiff;

* Published in the Government Gazette, Vol. 118, Part 68a, dated 22nd August B.E. 2544 (2001)

- 3.2 Civil Case Judgment No. 1063/2541 with Mrs. Chusri Wadyim as plaintiff;
- 3.3 Civil Case Judgment No. 1811/2541 with Mrs. Mali Pithaksanay as plaintiff.

- 4) Mr. Nimitr Kullawanich was a defendant in 2 cases, namely:
 - 4.1 Civil Case Judgment No. 4161/2536 with Mrs. Tuenjai Trivichean as plaintiff;
 - 4.2 Civil Case Judgment No. 5134/2538 with Mrs. Suphapon Kanuenghet as plaintiff.
- 5) Mrs. Sunt Trailert was a defendant in 3 cases, namely:
 - 5.1 Civil Case Judgment No. 4250/2539 with Mrs. Tuenjai Trivichean as plaintiff;
 - 5.2 Civil Case Judgment No. 474/2540 with Mr. Nak Thanaphongtham as plaintiff;
 - 5.3 Civil Case Judgment No. 1555/2541 with Mr. Chadchai Kanunghet as plaintiff.
- 6) Civil Case Judgment No. 3788/2542 between Mr. Wanchai Watcharamongkol, as plaintiff, and Mr. Manop Traimontri, as defendant.
- 7) Civil Case Judgment No. 4838/2542 between Mr. Wanchai Watcharamongkol, as plaintiff, and Mr. Noojant Kaewkern, as defendant.
- 8) Civil Case Judgment No. 401/2542 between Mr. Nak Thanaphongtham, as plaintiff, and Mrs. Wandee Cha-aimthet, as defendant.
- 9) Civil Case Judgment No. 4612/2542 between Mr. Chadchai Kanunghet, as plaintiff, and Mr. Somjet Saengkhumphai, as defendant.
- 10) Civil Case Judgment No. 1434/2542 between Mrs. Tuenjai Trivichean, as plaintiff, and Mr. Phongchai Phornchuen, as the first defendant, and Mr. Sompong Khamhormruen, as the second defendant.

Taling Chan District Court and Thonburi Civil Court referred the objections of the defendants in civil cases, a total of 20 applications, to the Constitutional Court in request of a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) on whether or not section 286 (3) of the Civil Procedure Code was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts could be summarised as follows:

1.1 The applicant in each case was sued under a loan agreement. In some cases the Court passed judgments for the defendant to repay the debts. In other cases the Court passed final judgments in accordance with a settlement that the defendants repay the debts.

1.2 The plaintiff in each case requested for a warrant of legal execution and legal execution was effected by a deduction of the salaries, remuneration and bonuses of the applicants in accordance with the order of the legal execution officer.

1.3 Subsequently, the applicants' employments were terminated with severance pay. The legal execution officer ordered the attachment of such sums. The applicant in each case submitted an application to the Court requesting for a new determination of the amount of sums under the claim rights that were subject to the attachment (application for a determination of the amount of sums which the legal execution officer could attach to the claim rights). The applicants invoked rights under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and submitted applications for the Court to refer opinions to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue

The applicants were parties to cases in Courts which had been given final judgments and the applications were submitted during the legal execution process. The applications stated that section 286 paragraph one subparagraph (3) of the Civil Procedure Code, which was a law which the Court was going to apply to a case, was unlawful under section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) by reason of its contrariness or inconsistency with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Requests were made for the Court to refer the applications to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the Court had already referred such applications to the Constitutional Court. In such cases, the parties were entitled to institute proceedings under section 148 (1) of the Civil Procedure Code, which stated that "in a case which has been given a final judgment or order, the same parties to the case shall not re-litigate the issue which was adjudicated in such a case with the exception of the following cases (1) the legal execution procedure pursuant to a judgment or order of the Court." Section 302 paragraph one of the Civil Procedure Code conferred powers on the Court to adjudicate on the following matters: "the Court which has the power to issue a legal execution warrant or an arrest warrant of a judgment-debtor or the power to invoke its ruling on any matter relating to the legal execution of a judgment or order for presentation to the Court in accordance with the legal provisions on obligations is the Court which considered and passed a judgment on the case at the first instance." It could therefore be inferred that at the legal execution stage of a judgment or order, there could still be a trial and adjudication. Section 286 paragraph one subparagraph (3) was therefore a provision of law which the Court was going to apply to the defendant's case under section 264 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Even though such cases under the applications had been given final judgments, the Court still retained adjudicative powers during the legal execution stage. Whether or not the Constitutional Court ruled that such applications were in agreement with section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) would not affect the final Court judgments that had been made because the debtors would still be liable under their judgment-debts. The applications were therefore in accordance with section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and the Constitutional Court had the power to accept such applications for consideration.

3. The issue considered by the Constitutional Court

The issue considered was whether or not section 286 paragraph one subparagraph (3) of the Civil Procedure Code, which conferred powers on the Court to exercise a discretion in the determination of the amount of monetary claims which were exempted from the scope of legal execution, was contrary to or inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion:

Section 286 of the Civil Procedure Code was a provision which safeguarded a judgment-debtor's ability to maintain his living or engage in functions by relying on the monetary claims which were exempted from the scope of legal execution. However, section 286 paragraph one subparagraph (2) and subparagraph (3) contained contrasting provisions. Section 286 paragraph one subparagraph (3) of the Civil Procedure code stipulated that the Court should determine the amount of the judgment-debtor's monetary claim rights which would be exempted from the scope of legal execution where the judgment-debtor was a member of staff, employee or workman who was not a State official or employee of the government.

On the other hand, section 286 paragraph one subparagraph (2) provided that all monetary claims identical to section 286 paragraph one subparagraph (3) receivable by a State official or an employee of the government were exempted from the scope of legal execution without the need of a Court determination such as in section 286 paragraph one subparagraph (3). However, after considering the status of State officials and employees of the Government who were subject to disciplinary rules under various laws and regulations, such persons did not have the rights and liberties available to people generally. Moreover, certain restrictions have been imposed on their engagement of other occupations, especially for certain positions held by State officials or employees of the government where a total prohibition from the engagement of other occupations had been imposed. These people could only rely on their salaries and other monies prescribed by the law. Section 286 paragraph two of the Civil Procedure Code stipulated the rule that the Court should determine the monetary claims of the judgment-debtor who was a member of staff, employee or workman under section 286 paragraph one subparagraph (3) which was excluded from the scope of legal execution by applying the lowest scale of salary of a civil servant as a basis for determination. A right of appeal to the Court of Appeals was also granted for the determination of such amount of money by the Court of First Instance. Nevertheless, the trial Court was given a discretion in its determination of the appropriate and equitable sum of money according to the circumstances of the case. Based on the principles and reasons stated above, there was no case of unjust discrimination under section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court held that section 286 paragraph one subparagraph (3) of the Civil Procedure code was neither contrary to nor inconsistent with section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
