

Summary of the Constitutional Court Ruling No. 30/2546

Dated 28th August B.E. 2546 (2003)*

Re : Are section 38 ter paragraph two, section 38 quarter paragraph two, section 38 quinque and section 38 septem of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962), (No. 4), B.E. 2541 (1998), and section 67 ter paragraph two, section 67 quarter paragraph two and section 67 sex of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), as amended by the Emergency Decrees Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 3), B.E. 2540 (1997), and (No. 5), B.E. 2541 (1998), contrary to or inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

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1. Background and summarized facts

The Thonburi Civil Court referred to the Constitutional Court an objection of the applicant (Mr. Monsant Maruekatat), who was a defendant in Case No. 4038/2543, requesting for a Constitutional Court ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts could be summarized as follows.

Thai Thanakarn Bank Public Limited, as plaintiff, filed claims against Mr. Monsant Maruekatat, the first defendant, and Mr. Weera Manakongtreecheep, the second defendant, at the Thonburi Civil Court on allegations of breaches pertaining to credit facilities, discounted sale of bills, bills and guarantees. The plaintiff filed for a judgment that both defendants should be made jointly or severally liable for the sum of 38,498,305.50 baht together with interests at 15 percent per annum from the principal sum of 24,172,784.76 baht accruing as from the day following the date of case filing until the complete repayment of debts to the plaintiff.

The first defendant, as the applicant, submitted an application to the Thonburi Civil Court objecting that the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962), (No. 4), B.E. 2541 (1998), and the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 5), B.E. 2541 (1998),

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which were laws raised by the plaintiff in these proceedings, were contrary to or inconsistent with the Constitution on several points. The applicant considered that both laws in the plaintiff's claims, which were to be applied by the court to the case, were subject to section 6 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and that there had not yet been a ruling of the Constitutional Court on such issues. The applicant therefore requested for a temporary stay of the proceedings and a reference of an opinion to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Thonburi Civil Court determined that there had not yet been a ruling of the Constitutional Court on such matters and imposed a temporary stay on the proceedings as well as referred the defendant's objection, as an applicant, to the Constitutional Court for further proceedings.

2. Preliminary issue

The preliminary issue considered was whether or not the Constitutional Court could accept the application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that this was a case where the applicant, being a defendant in a case, objected that provisions of law to be applied by the Thonburi Civil Court to the case were contrary to or inconsistent with section 29 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court could therefore accept the matter for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. The issues considered by the Constitutional Court

The following issues had to be considered by the Constitutional Court.

(1) Were section 38 ter paragraph two, section 38 quarter paragraph two, section 38 quinque and section 38 septem of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962), (No. 4), B.E. 2541 (1998), contrary to or inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court had previously ruled in Ruling No. 9/2545, dated 12th March B.E. 2545 (2002), and Ruling No. 49/2545, dated 12th September B.E. 2545 (2002), that section 38 ter and section 38 septem of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962), (No. 4), B.E. 2541 (1998), were neither contrary to nor inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On these issues, the Constitutional Court did not have to make another ruling. Thus, the issues which remained to be considered were whether or not section 38 quarter paragraph two and section 38 quinque were contrary to or inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. The Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962), (No.4), B.E. 2541 (1998), was a law enacted to remedy problems relating to the standing and operations of commercial banks. It was generally applicable on all commercial banks including relevant financial institutions. The application of the law was not aimed at any particular case or person. Section 38 quarter paragraph two and section 38 quinque, which were added by the Emergency Decree to the Commercial Banking Act, B.E. 2505 (1962), were provisions governing the implementation of merger projects between commercial banks themselves or between commercial banks and financial institutions or the transfer of a commercial bank's business to another commercial bank or financial institution which had been approved by Minister of Finance upon the advice of the Bank of Thailand. The provisions aimed to ensure that mergers or transfers of businesses of banks or financial institutions were conducted expediently, in good order, efficiently and lawfully. In the result, the commercial banking system would acquire stability and strength whilst maintaining the economic security of the country. Such provisions in both sections did not contain any text which were contrary to or inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Therefore, section 38 quarter paragraph two and section 38 quinque of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962), (No. 4), B.E. 2541 (1998), were neither contrary to nor inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

(2) Were section 67 ter paragraph two, section 67 quarter paragraph two and section 67 sex of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), as amended by the Emergency Decrees Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 3), B.E. 2540 (1997), and (No. 5), B.E. 2541 (1998), contrary to or inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) ?

The Constitutional Court had previously ruled in Ruling No. 9/2545, dated 12th March B.E. 2545 (2002), and Ruling No. 49/2545, dated 12th September B.E. 2545 (2002), that section 67 ter and section 67 sex of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), as amended by the Emergency Decrees Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 3), B.E. 2540 (1997), and (No. 5), B.E. 2541 (1998), were neither contrary to nor inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

On these issues, the Constitutional Court did not have to make another ruling. The issue which remained to be considered was whether or not section 67 quarter paragraph two of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), as amended by the Emergency Decree Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 3), B.E. 2540 (1997), and (No.5), B.E. 2541 (1998), was contrary to or inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held the following opinion. The Emergency Decrees Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 3), B.E. 2540 (1997), and (No. 5), B.E. 2541 (1998), were laws which were enacted to prescribe measures to promote and support the merger or transfer of businesses by financial institutions in revival of their standings and in order to engender security in the financial institution system and protect the interests of the people. The laws were generally applicable on all relevant finance companies and financial institutions. They were not aimed at any particular case or person. Although there were certain provisions which restricted the rights of the people, the provisions of the Constitution which authorised the enactment of such restrictions had been specified. Section 67 quarter paragraph two, which was added by the Emergency Decrees to the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), essentially contained provisions which exempted the application of the provisions in nine sections of the Civil and Commercial Code, ten sections of the Public Limited Company Act, B.E. 2535 (1992), and three sections of the Bankruptcy Act, B.E. 2483 (1940), to cases where necessity arose in respect of the implementation of activities relating to those sections. The purpose was to enable the implementation of merger projects between finance companies and other financial institutions or the transfer of business to another financial institution permitted by the Minister of Finance upon the advice of the Bank of Thailand to proceed expediently, in good order, efficiently and lawfully. In the result, the financial institution system would be strengthened and the interests of the people protected. The provisions of section 67 quarter paragraph two did not contain any text which was contrary to or inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Therefore, section 67 quarter paragraph two of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), as amended by the Emergency Decrees Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 3), B.E. 2540 (1997), and (No. 5), B.E. 2541 (1998), was neither contrary to nor inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held that section 38 ter paragraph two, section 38 quarter paragraph two, section 38 quinqué and section 38 septem

of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Emergency Decree Amending the Commercial Banking Act, B.E. 2505 (1962), (No. 4), B.E. 2541 (1998), and section 67 ter paragraph two, section 67 quarter paragraph two and section 67 sex of the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), as amended by the Emergency Decrees Amending the Finance, Securities and Credit Foncier Business Act, B.E. 2522 (1979), (No. 3), B.E. 2540 (1997), and (No. 5), B.E. 2541 (1998), were neither contrary to nor inconsistent with section 29 and section 30 paragraph one of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
