

Summary of Constitutional Court Ruling

No. 28/2547

Dated 12th February B.E. 2547 (2004)*

Re: The Central Administrative Court referred the plaintiff's objection to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case of whether or not section 21 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), was contrary to or inconsistent with section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The facts under the application may be summarized as follows. Colonel Puangjan Wongwiset (first plaintiff) filed a plaint against the Nursing Council (defendant) at the Central Administrative Court in Case No. 1574/2545. Miss Suda Laoskulcharoen (second plaintiff) filed a plaint against the Nursing Council (defendant) at the Central Administrative Court in Case No. 1719/2545. Miss Tanee Jinayon (third plaintiff) filed a plaint against the Nursing Council (defendant) at the Central Administrative Court in Case No. 1854/2545. The Central Administrative Court determined that all three cases involved the same claims and therefore consolidated hearings of the three cases in one trial.

According to the complaints, the first and second plaintiffs received licenses to engage in contemporary medical practice in the fields of nursing and midwiving issued by virtue of the Control of Medical Practice Act, B.E. 2479 (1936), on 16th October B.E. 2510 (1967) and 9th June B.E. 2523 (1980) respectively. The third plaintiff received a license to engage in contemporary medical practice in the fields of nursing and midwiving issued by virtue of Nursing and Midwiving Professions Act, B.E. 2528 (1985), on 9th June B.E. 2535 (1992). Such licenses did not prescribe any expiration dates. Subsequently, the defendant proposed the enactment of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997). Section 16 of Act provided for the addition of paragraph three to section 29 of the Nursing and Midwiving Professions Act, B.E. 2528 (1985). The amendment provided that all categories of licenses would expire five years as from the date of licensing. Moreover, section 21 of the same Act provided that a license issued under the Control of Medical Practice Act, B.E. 2479 (1936), or a license issued under the Nursing and Midwiving Professions Act, B.E. 2528 (1985), would be valid for five years as from the date of coming

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into force of the amending Act. As a result, all licenses expired on 23rd December B.E. 2545 (2002). The three plaintiffs were of the opinion that section 21 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), which provided that a license for engaging in contemporary medical practice in the fields of nursing, midwiving and nursing and midwiving issued under the Control of Medical Practice, B.E. 2479 (1936), or a license issued under the Nursing and Midwiving Professions Act, B.E. 2528 (1985), that was still valid on the date of coming into force of this amending Act would be valid for five more years as from such date of coming into force of the Act was an enactment of a law restricting the rights and liberties of a person to engage in an occupation contrary to or inconsistent with section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Central Administrative Court referred the objections of the plaintiffs to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. The issues considered by the Constitutional Court

First issue. Was the enactment of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), contrary to or inconsistent with section 29 paragraph two of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held that the plaintiffs' objection on whether or not the enactment of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), was contrary to or inconsistent with section 29 paragraph two of the Constitution had already been ruled on in Ruling No. 35-36/2544, dated 30th October B.E. 2544 (2001). The ruling held that an objection that a law was enacted without specifying the constitutional provisions which authorized the enactment of such law constituted an objection that a law was unduly enacted under the provisions of the Constitution. Section 264 of the Constitution did not confer a right on the applicants to make such an application. Therefore, the Constitutional Court did not have to rule on this issue.

Second issue. Did section 21 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), provide for a detrimental retroactive application of law that was contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held as follows. The applicants objected that section 21 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), was contrary to or inconsistent with the Constitution without specifying the section of the Constitution that was contrary or inconsistent. This was not in accordance with clause 6(2) of the Rules of the Constitutional Court on Constitutional Court Procedures, B.E. 2546 (2003), which provided that an application should specify the sections of the Constitution of the Kingdom of Thailand that were relevant to the cause of the application. Therefore, the Constitutional Court did not have to rule on this issue.

Third issue. Was section 21 of the Nursing and Midwiving Professions Act (No. 2),

B.E. 2540 (1997), contrary to or inconsistent with section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

The Constitutional Court held as follows. Section 50 of the Constitution provided that a person had the liberties to engage in an enterprise or an occupation and to undertake fair and free competition. The restriction of such liberties could not be imposed except by virtue of a law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition. Section 29 of the Constitution provided a guarantee for the security of rights. A restriction of personal rights and liberties had to satisfy the criteria of being imposed by virtue of provisions of law specifically enacted for the purpose determined by the Constitution and only to the extent of necessity and provided that it should not affect the essential substances of such rights and liberties. With regard to section 21 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), which provided that “a license to engage in contemporary medical practice in the fields of nursing, midwiving and nursing and midwiving issued under the Control of Medical Practice Act, B.E. 2479 (1936), or a license issued under the Nursing and Midwiving Professions Act, B.E. 2528 (1985), which is still valid at the date which this Act comes into force shall continue to be valid for five more years as from the date which this Act comes into force,” the Constitutional Court held that the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), had the intention of promoting the standard of nursing and midwiving professions to engender proper and efficient practice. It was envisaged that the public service-users would benefit from the safe provision of these services. Section 21 was enacted in line with section 16 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), which provided that a new license would be valid for five years as from the date of issue, in order to prevent any discrimination between existing licenses and new licenses. Moreover, the prescription of a validity period and the renewal of licenses also conferred benefits and gains to the people who used those services by ensuring that the services were rendered at the proper standards and efficiencies. Even though section 21 provided for a restriction of the liberty of engaging in an occupation under section 50 paragraph one of the Constitution, paragraph two of section 50 contained a provision for the restriction of such liberty by virtue of provisions of law specifically enacted for the purpose of protecting public welfare. The restriction was imposed to the extent that was necessary and did not affect the essential substance of the liberty pursuant to section 29 of the Constitution. Also, the prescription of a validity period for such licenses did not mean that once the licenses expired the licensees would not be able to continue engaging in their occupations. On the contrary, they had the right to remain in the profession so long as their licenses were renewed under the rules prescribed by law. As a result, the liberty of engaging in an occupation was not affected in any way. Granting a license without an expiration date would hinder the enhancement of knowledge and ability of a licensee that was necessary for working efficiency and may have detrimental consequences to the public service-users.

Therefore, section 21 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), was neither contrary to nor inconsistent with section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

3. Ruling of the Constitutional Court

Section 21 of the Nursing and Midwiving Professions Act (No. 2), B.E. 2540 (1997), was neither contrary to nor inconsistent with section 29 in conjunction with section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
