

Summary of Constitutional Court Ruling

No. 31/2547

Dated 2nd March B.E. 2547 (2004)*

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 a case on the powers and duties of organs under the Constitution pertaining to the enactment of the Rajabhat University Bill, B.E.

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1. Background and summarized facts

The President of the National Assembly submitted an application and an opinion to the Constitutional Court for a ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This matter arose from the following facts. The National Assembly, through the Secretariat of the House of Representatives, had confirmed the resolution approving the Rajabhat University Bill, B.E. and sent such Bill to the Secretariat of the Cabinet for presentation by the Prime Minister to the King for signature pursuant to section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Secretariat of the Cabinet discovered certain conflicting provisions within the Bill which posed a problem on a point of law, and as a result thereof, informed the Secretariat of the House of Representatives to withdraw the Bill in order to take rectification proceedings. The President of the House of Representatives ordered the withdrawal of the Bill in order to make factual examinations and to pursue a course of action that was in accordance with the Constitutional provisions. In this event, the President of the National Assembly invited the President of the Senate, all the Chairpersons of Standing Committees in both houses of the National Assembly, Chairperson of the Select Committee on Senate Affairs, Chief Whip and Chief Opposition Whip to a meeting at which a resolution was passed to appoint a committee to consider the problem pertaining to the enactment of the Rajabhat University Bill, B.E., which had already been approved by the National Assembly. Such committee found that cause of the problem lay at the Senate stage when the texts of such Bill approved by the National Assembly were found to be intrinsically conflicting or inconsistent on two issues, namely:

First issue. In the appointment of an honorary professor under section 18(8) (renumbered to section 17(8) at Senate stage), it was provided that University Senate shall

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make a nomination to the King for appointments and removals. However, the provisions section 52 (renumbered to section 51 at Senate stage) provided that the University Senate shall have the power to appoint honorary professors.

Second issue. The appointment and removal of an honorary professor under section 18(9) (renumbered to section 17(9) at Senate stage) provided that the University Senate shall have the power to make appointments and removals, but the provisions of section 31(7) (renumbered to section 30(7) at Senate stage) provided that the Director-General shall have the power to make appointments and removals.

The withdrawal of the Bill from the Secretariat of the Cabinet raised an objection that the National Assembly was not able to retract the Bill to make changes to the texts whatsoever because the Constitution had already laid down clear procedures for enacting legislation. The President of the National Assembly was of the opinion that such a problem concerned the performance of duties of organs under the Constitution, comprising the House of Representatives, Senate and the Prime Minister. Moreover, the problem raised a conflict where it had to be decided whether or not and to what extent the Rajabhat University Bill, B.E. could be presented to the King under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), with certain mistaken and conflicting provisions, and whether or not and to what extent the Bill could be retracted in order to make corrections. Thus, it was deemed appropriate that the Constitutional Court should make a ruling in order to lay down a precedent for proper performance under the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

2. Preliminary issue.

The preliminary issue considered by the Constitutional Court was whether or not the President of the National Assembly had standing to submit an application to the Constitutional Court and whether or not the Constitutional Court had the power to accept this application for ruling under section 266 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. The National Assembly comprised the House of Representatives and the Senate, being organs established by the Constitution and whose powers and duties were enumerated in the Constitution. Therefore, the National Assembly was an organ under the Constitution. Under this application, a problem arose where the National Assembly had approved the Rajabhat University Bill, B.E..... and sent such Bill to the Secretariat of the Cabinet for presentation by the Prime Minister to the King for signature pursuant to section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). However, prior to such presentation by the Prime Minister, conflicting provisions were discovered in the Bill. As a result of such discovery, the National Assembly, through the President of the House of Representatives, issued an order to the effect that the Secretariat of the House of Representatives, which was under a duty to confirm

resolutions of the National Assembly under rule 10 of the Rules of Procedures of the House of Representatives, B.E. 2544 (2001), should contact the Secretariat of the Cabinet to retract the Bill in order to make the necessary corrections before re-submitting the same to the Prime Minister for presentation to the King for signature pursuant to section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). It was disputed as to whether this could be done. Therefore, in this case, a problem had actually arisen on the powers and duties pertaining to the enactment of the Rajabhat Bill, B.E. by the National Assembly, consisting of the House of Representative and the Senate, in its exercise of such function. In addition, the National Assembly was also an organ under the Constitution. Thus, upon the submission of an application and opinion by the President of the National Assembly to the Constitutional Court for a ruling, the Constitutional Court could accept this 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 issue considered by the Constitutional Court was that in the event that the National Assembly had approved the Rajabhat University Bill, B.E. and submitted such Bill to the Secretariat of the Cabinet for presentation by the Prime Minister to the King for signature under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), if before the Prime Minister made the presentation conflicts in certain provisions were found in the Bill, whether or not the National Assembly could retract a Bill in order to make the proper corrections to such Bill before resubmitting the same to the Prime Minister for presentation to the King for signature under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 92 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), provided that a Bill may be enacted as law only by and with the advice and consent of the National Assembly. Section 90 provided that the National Assembly consisted of the House of Representatives and the Senate and joint or separate sittings should be in accordance with the provisions of the Constitution. Section 172 provided that a Bill should be first submitted to the House of Representatives. Thereafter, section 174 provided that when the House of Representatives had considered a Bill submitted under section 172 and resolved to approve it, the House of Representatives should submit such Bill to the Senate. In this regard, section 175 paragraph one subparagraph (3) provided that after the Senate had finished the consideration of a Bill, if there was an amendment, the amended Bill should be returned to the House of Representatives. If the House of Representatives approved such amendment, further proceedings under section 93 should be taken. In other words, the Prime Minister should present it to the King for signature within twenty days as from the date of the receipt of such Bill from the National Assembly and upon publication in the Government Gazette it should come into force as law. In addition, section 191 stated that the House of Representatives and the Senate had the power to make rules of procedure governing the submission and consideration of bills and other matters for the execution of the Constitution, in pursuance of which the House of

Representatives enacted the Rules of Procedure of the House of Representatives, B.E. 2544 (2001), to prescribe several details on the consideration of a Bill. The Senate also enacted the Rules of Procedure of the Senate, B.E. 2544 (2001), prescribing details on the consideration of a Bill, such as rule 108 which stated that the consideration of a Bill should be made in three readings, and rule 121 which stated that in the third reading of a Bill or Organic Bill, if amendments had been made in the second reading, the Senate should pass a resolution on whether or not to adopt the amendments, in which case, a resolution to adopt the amendments was tantamount to effecting amendments which had been made in the second reading, whereas a resolution to reject the amendments meant that the Senate approved the Bill as considered by the House of Representatives with no amendments made. Furthermore, rule 122 stated that the President of the Senate should inform the House of Representatives when the Senate passed a resolution to amend a Bill, and rule 12(5) stipulated that the Secretary-General of the Senate should have the powers and duties of sending a confirmation of the Senate's resolution to the relevant persons. In the case where the Senate made amendments to the Bill approved by the House of Representatives, rule 121 of the Rules of Procedure of the House of Representatives, B.E. 2544 (2001), only provided for the House of Representatives to consider whether or not to adopt the Senate's amendments. Therefore, if the House of Representatives concurred with the Senate's amendments, the House of Representatives had to proceed in accordance with section 175 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), i.e. to proceed under section 93. However, there were no provisions prescribing a time period for the National Assembly to send the Bill to the Prime Minister and rule 10 (5) of the Rules of Procedure of the House of Representatives, B.E. 2544 (2001) only provided that the Secretary-General of the House of Representatives had the duty to send a confirmation of the House of Representative's resolution to the relevant persons.

In the case of this application, the Constitutional Court held the following opinion. The House of Representatives had considered and resolved to approve the Rajabhat University Bill, B.E. and sent such Bill to the Senate for further consideration. Thereafter, the Senate, by resolution, made amendments to the Bill and sent the amended bill to the House of Representatives for further proceedings under section 175 paragraph one subparagraph (3) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The House of Representatives concurred with the Senate's amendments and the Secretary-General of the House of Representatives confirmed the National Assembly's resolution approving the Rajabhat University Bill, B.E. as well as sent such Bill to the Secretariat of the Cabinet for presentation by the Prime Minister to the King for signature under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Once the National Assembly, through the House of Representatives and the Senate, had carried out all the procedures of enacting a Bill as prescribed by the Constitution in conjunction with the Rules of Procedure of both houses of the National Assembly, it could be deemed that the Rajabhat Bill, B.E. had already been approved by the National Assembly under section 175 paragraph one subparagraph (3). The minutes of meetings and relevant documents that during the Senate stage revealed the fact that the Senate considered section 51 of the Bill together

with section 17(9) pursuant to a proposal of the Vice-Chairman of the Select Committee for fear that other sections containing the words “honorary associate professor” and “honorary professor” might conflict. Thereafter, at the stage of the section-by-section consideration of the Senate, there was a debate on both the issues of the Select Committee’s deletion of the words “honorary associate professor” and “honorary assistant professor” as well as the reasons and appropriateness of amendments relating to academic titles of the honorary faculty, consisting of the honorary professor, honorary associate professor, honorary assistant professor and honorary lecturers. During the debate, certain select committee members and senators requested the retention of the original text of section 51. When the Senate resolved to retain the provisions of section 17(9) as according to the original Bill approved by the House of Representatives and the select committee members who reserved their opinions to retain the original provisions of section 17(9) and section 51 had discussed with the Senate after the resolution on section 17 that the relevant sections were section 51, section 52 and section 53. Thus, upon reaching those sections, there should be no further debate, which in fact when the Senate went through the sections to section 51, no senator or select committee member debated. In such a case, it should also be deemed that the Senate passed a resolution on section 51 to retain the original draft of the House of Representatives. The confirmation of the Senate’s resolution should be carried out accurately in accordance with the Senate’s resolution in order that the text of both paragraph one and paragraph two of section 51 remain in accordance with the original Bill of the House of Representatives pursuant to such resolution by the Senate. However, the resolution was carried out only in relation to the provisions of section 51 paragraph one to reflect the original draft of the House of Representatives without carrying out the same in section 51 paragraph two to reflect that original draft of the House of Representatives. As a result, the text was inconsistent with section 17(8), which was the first issue under the application. Whereas the Senate’s resolution to retain the wording of section 17(9) as it was according to the original Bill of the House of Representatives but without carrying out to make section 17(9) in accordance with the original Bill of the House of Representatives, makes the section inconsistent with section 30(7), which is the second problem under the application.

Section 92 of the Constitution provided that a Bill could be enacted as law only by and with the advice and consent of the National Assembly and section 175 paragraph one subparagraph (3) provided the National Assembly’s process for enacting legislation in the event that the Senate resolved to make amendments. In other words, if the House of Representatives approved such amendments, further proceedings should be made under section 93 of the Constitution. The National Assembly is therefore under a duty to duly implement the resolution of the National Assembly prior to sending the Bill to the Prime Minister for presentation to the King for signature under section 93. Once the National Assembly is under such a duty, proceedings to secure the Bill’s accordance with the National Assembly’s resolution became a part of the process for enacting legislation. If there is an inconsistency in the proceedings to secure the Bill’s due accordance with the National Assembly’s resolution at Senate stage which retained the House of Representative’s original Bill, it would be possible to take proceedings that conform with the Senate’s resolution in

order to truly secure the correct text in accordance with the National Assembly's resolution prior to sending the Bill to the Prime Minister for proceedings under section 93. Hence, prior to the Prime Minister's presentation of the Bill to the King for signature, if there appeared to be an inconsistency in the due conduct of proceedings with respect to the National Assembly's resolution at the Senate stage which resolved to retain the original Bill of the National Assembly, it could be deemed that the Bill sent to the Prime Minister was not the proper Bill pursuant to the National Assembly's resolution under section 175 paragraph one subparagraph (3) of the Constitution. The National Assembly, in its capacity as the organ giving advice and consent for the enactment of a Bill under section 92 of the Constitution, was therefore able to request the return of such Bill in order to make corrections in accordance with the resolution of the National Assembly in so far as it relates to the inconsistency in the proceedings as is necessary in accordance with the Senate's resolution to retain the original Bill of the House of Representatives, thus rendering a Bill which was completely approved by the National Assembly before proceeding under section 93 of the Constitution. The facts in this case appeared that the Rajabhat University Bill, B.E. contained some provisions in section 18(9) and section 52 which was inconsistent with the Senate's resolution in retaining the original Bill of the House of Representatives, causing the inconsistencies on two issues arising from irregular conduct of proceedings carried out under the Senate's resolution, which under the original Bill of the House of Representatives the texts in such sections were already consistent. The President of the House of Representatives requested the return of the Bill which was approved by the National Assembly as was approved by the House of Representatives in accordance with amendments made under section 175 paragraph one subparagraph (3) of the Constitution, but which contained inconsistencies in proceedings, in order to carry out due proceedings in accordance with the National Assembly's resolution at Senate stage only in relation to section 18(9) and section 52 so that section 18(9) and section 52 of the Rajabhat University Bill, B.E. would be in accordance with the original Bill of the House of Representatives. Thus the parts which were inconsistent and conflicting between section 18(8) and section 52 paragraph two on the one hand and section 18(9) and section 31(7) on the other hand would be eliminated. This was not a new proceedings in the consideration of the Rajabhat University Bill, B.E. approved by the House of Representatives after adopting the amendments made by the Senate under section 175 paragraph one subparagraph (3) of the Constitution. Finally, once proceedings had been taken to secure the proper text of the Rajabhat University Bill, B.E. in accordance with the Senate's resolution, the remission of the due and complete Rajabhat University Bill, B.E. to the Prime Minister for presentation to the King for signature under section 93 of the Constitution was therefore in accordance with the above provisions of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court ruled that in the National Assembly's approval of the Rajabhat University Bill, B.E. and remission of such Bill to the Secretariat of the Cabinet

for presentation by the Prime Minister to the King for signature under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), if prior to the Prime Minister's presentation, conflicting provisions in the Bill were discovered that were inconsistent with the due proceedings under the resolution of the Senate which retained the original Bill of the House of Representatives in relation to section 18(9) and section 52, the National Assembly, in its capacity as the organ giving advice and consent for the enactment of a Bill under section 92 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was able to retract the Bill in order to carry out due and proper corrections in accordance with the Senate's resolution to the extent of the inconsistency under the application before sending the same to the Prime Minister for presentation to the King for signature under section 93 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
