

Summary of Constitutional Court Ruling

No. 32-34/2547

Dated 11th March B.E. 2547 (2004)*

Re: Songkhla Provincial Court submitted an opinion and Pattani Provincial Court referred petitioners' objections in two cases 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 58 of the Election of Municipal Council Members Act, B.E. 2482 (1939), was contrary to or inconsistent with section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Office of the Judiciary sent a letter, dated 13th February B.E. 2545 (2002), which referred an opinion of Songkhla Provincial Court (the applicant) and petitioners' objections in cases in Pattani Provincial Court, a total of three applications, together with supporting documents, to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The facts could be summarized as follows.

In the first application, a petitioner in Civil Case No. PK 4/2544 protested the election of members of the Chalae Tambon Administrative Organisation Council, Songkhla Province, relying on section 25 of the Tambon Council and Tambon Administrative Organisation Act (No. 3), B.E. 2542 (1999), which provided that the Election of Municipal Council Members Act, B.E. 2482 (1939), applied *mutatis mutandis* to a protest of an election of members of the Tambon Administrative Organisation Council. In this regard, section 57 of the Election of Municipal Council Members Act, B.E. 2482 (1939), provided that in the event where any candidate found that an election in the relevant constituency proceeded unlawfully, he would have the right to file a petition at a competent court of first instance in such constituency. Section 58 provided further that a court adjudicating on a case of election protest should apply the Civil Procedure Code. Pursuant to such provisions, the petitioner in the case filed a petition at the Songkhla Provincial Court.

The Songkhla Provincial Court considered the petition and reached the following opinion. Subsequent to the coming into force of the Tambon Council and Tambon Administrative Organisation Act (No. 3), B.E. 2542 (1999), the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was

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promulgated. The election protest had the characteristics of an administrative case. Section 9 stated that a dispute concerning an unlawful or bad faith act or an abuse of discretion by a State official was within the jurisdiction of the Administrative Courts. As the cause of action for this case arose at a time when the Administrative Courts had already been established, this case was therefore within the jurisdiction of the Administrative Courts. Hence, by virtue of section 10 paragraph one subparagraph (3) in conjunction with section 10 paragraph three of the Act on Determination of the Competent Jurisdictions of Courts, B.E. 2542 (1999), such opinion was referred to Songkhla Administrative Court for consideration.

Subsequently, the Office of Songkhla Administrative Court issued a letter dated 5th November B.E. 2544 (2001) (No. S.SP. SK 22/344) notifying its opinion on the matter concerning the competent jurisdictions of the courts that in the case of this application, the Committee for Determination of Competent Jurisdictions of Courts had made ruling No. 1/2544 that the Courts of Justice possessed adjudicative jurisdiction over protests concerning elections of members of municipal councils under the Election of Municipal Council Members Act, B.E. 2482 (1939). Therefore, the case in this application was within the adjudicative jurisdiction of the Courts of Justice, i.e. Songkhla Provincial Court. After receiving the Administrative Court's opinion, Songkhla Provincial Court held the opinion to the contrary that section 276 of the Constitution provided for the Administrative Courts' jurisdiction with the objective of rendering administrative cases to be decided by the Administrative Courts, and that an election protest was an administrative case which, therefore, should be within the jurisdiction of the Administrative Court under section 276 of the Constitution. The fact that section 58 provided for the court reviewing the application of election protest to conduct proceedings under the Civil Procedure Code which entailed that the Courts of Justice had jurisdiction adjudicate a protest of such an administrative order was therefore a case where the provisions of section 58 of the Election of Municipal Council Members Act, B.E. 2482 (1939), was probably contrary to or inconsistent with section 276 of the Constitution. Thus, Songkhla Provincial Court referred its opinion through official channels to the Constitutional Court for a ruling under section 264 of the Constitution.

Under the second and third application, the petitioners in Civil Case No. 743/2545 and No. 746/2545 filed protests concerning elections of members of Talubo Tambon Administrative Organisation Council and Pabon Tambon Administrative Organisation Council, Pattani Province. The protests were filed under section 25 of the Tambon Council and Tambon Administrative Organisation Act (No. 3), B.E. 2542 (1999), which provided for the *mutatis mutandis* application of the Election of Municipal Council Members Act, B.E. 2482 (1939), to a protest of an election of members of a Tambon Administrative Organisation Council. In addition, section 57 of Election of Municipal Council Members Act, B.E. 2482 (1939), provided that any candidate who was of the opinion that the election in his constituency was unlawfully conducted had the right to file a petition at the court of first instance which had competent jurisdiction in that constituency. The petitioners in both applications therefore filed petitions at the Central Administrative Court.

The Central Administrative Court dismissed both petitions because section 58 of the Election of Municipal Council Members Act, B.E. 2482 (1939), required that the court adjudicating an election protest case must apply the Civil Procedure Code whereas the Administrative Court conducted proceedings by applying the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999). As a result, the petitioners filed petitions at the Pattani Provincial Court and thereafter filed an objection stating that a request for the court to declare an election unlawful was an administrative order under the Constitution which should be adjudicated by the Administrative Court. It was further stated that this should be so even though section 58 of the Election of Municipal Council Members Act, B.E. 2482 (1939), provided that proceedings should be conducted by applying the Civil Procedure Code. Therefore, the petitioners requested the Pattani Provincial Court to refer such objections to the Constitutional Court for a ruling. The Pattani Provincial Court held that such provisions were provisions of law which the court had to apply to the cases. Thus the objections were referred to the Constitutional Court for a ruling under section 264 of the Constitution.

2. Preliminary issue

The Constitutional Court admitted the applications for further proceedings under the Rules of the Constitutional Court on Constitutional Court Procedures, B.E. 2541 (1998), and consolidated all three applications into one case.

3. The issues considered by the Constitutional Court

The issue under the applications which had to be ruled on by the Constitutional Court was whether or not section 58 of the Election of Municipal Council Members Act, B.E. 2482 (1939), was contrary to or inconsistent with section 276 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The Constitutional Court held that prior to ruling on the issue presented in the applications; it had to decide whether or not such issue constituted a case with respect to an objection of the court's jurisdiction. This was necessary because section 248 of the Constitution provided for the establishment of a special committee whose function was to rule on objections concerning the conflicts of courts' competent jurisdictions. Section 58 of the Election of Municipal Council Members Act, B.E. 2482 (1939), provided that a court with adjudicative jurisdiction over election protests should conduct proceedings by applying the Civil Procedure Code which was the procedure of the Courts of Justice. In this case, all three applicants objected that, under the framework provided by section 276 of the Constitution, the proceedings for adjudicating a case of election protest should fall under the

adjudicative jurisdiction of the Administrative Courts. Such an issue therefore involved an objection relating to relative jurisdictions of the Courts of Justice and the Administrative Courts as regards adjudicative jurisdiction over election protest cases. As section 248 of the Constitution had already provided that such a matter should be within the powers of the Committee for Determination of Competent Jurisdictions of Courts, the Constitutional Court therefore dismissed the applications.
