

Summary of Constitutional Court Ruling

No. 45-46/2547

Dated 6th July B.E. 2547 (2004)*

Re: Are section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

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1. Background and summarized facts

First application. Mrs. Wichuda Ongkosit (or Witchuda Ongkosit), the applicant, filed a plaint against the Electricity Generating Authority of Thailand at the Central Administrative Court in Case No. 120/2545. The complaint stated the facts as follows. The plaintiff was a landowner in Chachoengsao Province. The defendant had issued a notification prescribing areas under survey for installation of 230-kilowatt electrical lines. The plaintiff was notified that the land under her deed number was affected by the area for electrical lines whereby the defendant would conduct a survey of properties affected by the electrical line installation survey and give compensations accordingly. The plaintiff notified the defendant to alter its electrical line installation area but the defendant was unable to comply with such request. Subsequently, the defendant notified the plaintiff to collect her compensation for the land affected by the electrical line installation but the plaintiff did not make a collection. The defendant therefore issued a letter notifying the plaintiff that the compensation had been deposited at the Government Savings Bank, and if the plaintiff was dissatisfied with the amount of such compensation, she was entitled to file a plaint at the court within one year as from the receipt date of such notification letter.

The plaintiff considered that such notification by the defendant, which was issued by virtue of section 28 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), as amended by the Electricity Generating Authority of Thailand Act (No. 5), B.E. 2535 (1992), and the Regulations on Electrical Line Installation, which was issued by virtue of section 29, section 31 and section 32 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), were Acts which contained certain provisions on the restriction of rights and liberties of persons whose enactment was authorized by section 29 in conjunction with section 31 paragraph three, section 35, section 48 paragraph one and section 50 of the Constitution. It was asserted that section 28 and section 29 of such Act were provisions contrary to or inconsistent with the Constitution, and that the provisions of section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), were

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provisions which restricted rights and liberties beyond what was necessary and affected the essential substances of rights and liberties, inconsistent with the provisions of section 29 paragraph one, section 48 paragraph one and section 49 of the Constitution.

Second application. Mr. Charoen Sakuldee, the applicant, filed a complaint against the Electricity Generating Authority of Thailand and relevant persons at the Central Administrative Court in Case No. 2387/2545. The plaintiff was a landowner and a co-owner of land with other persons in Chachoengsao Province. The plaintiff complained that the defendant trespassed and unlawfully utilized the land as well as exercised powers under provisions of law that were contrary to or inconsistent with the Constitution. The defendants relied on their authority under the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968). The plaintiff considered that section 29(1), section 29(2), section 29(3), section 32 and section 56 of such Act were neither provisions of law which restricted rights in property nor provisions which conferred authority on the first defendant to expropriate immovable property. On the other hand, it was asserted that those provisions conferred authority on the first defendant to a wider extent than the powers of expropriation under the Act on Expropriation of Land, B.E. 2530 (1987), and the Constitution. In other words, those provisions authorized the defendant's trespass and utilization of private land without any expropriation. The provisions were therefore contrary to or inconsistent with section 26, section 27, section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

Both applications requested the Administrative Court to refer the matter through official channels to the Constitutional Court for a ruling under section 264 of the Constitution. The Central Administrative Court held that such provisions of law had to be applied to the cases and there had not yet been a ruling of the Constitutional Court on the provisions. The Central Administrative Court therefore imposed a temporary stay on its proceedings and referred the plaintiffs' objections to the Constitutional Court for a ruling.

The Constitutional Court considered both applications and held that the issues submitted by both applications to the Constitutional Court for a ruling were identical. Both applications were therefore consolidated into one ruling.

2. Preliminary issue

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

The Constitutional Court held as follows. With respect to the objections in the application that section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), as amended by the Electricity Generating Authority of Thailand Act (No. 5), B.E. 2535 (1992), were contrary to or inconsistent with section 29, section 48 and section 49 of the Constitution, and the objections in the second application

that section 29 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), was contrary to or inconsistent with section 26, section 27, section 48 and section 49 of the Constitution, there had not yet been a ruling of the Constitutional Court on such provisions and the Central Administrative Court referred the matter to the Constitutional Court for a ruling. Therefore, this case was in accordance with section 264 of the Constitution. The Constitutional Court could accept these applications for consideration.

3. The issues considered by the Constitutional Court

The issues which had to be considered by the Constitutional Court were whether or not section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), as amended by the Electricity Generating Authority of Thailand Act, B.E. 2535 (1992), were contrary to or inconsistent with section 26, section 27, section 29, section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. The Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), was a law enacted in order to establish a State enterprise, namely the Electricity Generating Authority of Thailand. The Act contained provisions which enabled the agency to exercise certain State powers in order to provide public services. The electricity was a public service which the State was obligated to perform or provide for the benefit of the people. The operations or otherwise by an officer or employee of the Electricity Generating Authority of Thailand in connection with electric supply necessitated the temporary entry or occupation of immovable property that was occupied by others. If it was necessary to remove buildings or destroy other structures for the benefit of transmitting or distributing electricity, the Electricity Generating Authority of Thailand should pay fair compensation to the persons whose rights had been affected. Those operations had been divided into stages with the highest regard for persons whose rights had been affected. There might be instances where restrictions were imposed on the rights and liberties of persons or the rights of a person in property, but those instances were limited to the extent of necessity without prejudicing the essential substance of rights. As for the case concerning section 49 of the Constitution, the Constitutional Court found that the case under the application did not involve the taking of ownership in property belonging to another. Therefore, there did not have to be an expropriation of immovable property. In making an entry under section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1963), the owner of the immovable property did not lose rights in his or her property. Only certain rights of utilization were restricted. Nonetheless, if the Electricity Generating Authority of Thailand found it necessary to acquire immovable property in order to secure a source of electricity under section 6(2) and section 9(4), such immovable properties could be expropriated.

As for whether or not the calculation of compensation for the land was just or otherwise, such objection related to the lawfulness of actions taken by the Electricity Generating Authority of Thailand under provisions of law. The Constitutional Court did not have to rule on this issue.

4. Ruling of the Constitutional Court

From the reasons stated above, it could be deduced that even though the provisions of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), in such three sections had the characteristics of restricting the rights of a person in property; they were enacted for the collective benefit of the nation and were generally applicable. There were also channels for relieving damages sustained by persons whose rights had been affected as appropriate in each case. Such provisions could therefore be enacted as enforceable law under the Constitution. They were deemed as being within the constitutional limits of section 48 of the Constitution, which was a specific provision. Therefore, there was no instance of being contrary to or inconsistent with section 26, section 27 and section 29 of the Constitution, which were general provisions for the protection of human dignity, rights and liberties of a person. As for section 49 of the Constitution, such provision dealt with the expropriation of immovable property, which was unrelated to section 28, section 29 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968). Thus, there was no instance of being contrary to or inconsistent with each other.

By virtue of the above reasons, the Constitutional Court held that section 28 and section 30 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), as amended by the Electricity Generating Authority of Thailand Act (No. 5), B.E. 2535 (1992), were neither contrary to nor inconsistent with section 29, section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), and section 29 of the Electricity Generating Authority of Thailand Act, B.E. 2511 (1968), was neither contrary to nor inconsistent with section 26, section 27, section 29, section 48 and section 49 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
