

Summary of the Constitutional Court Ruling No. 13/2545

Dated 18th April B.E. 2545 (2002) *

Re : Are section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), and section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992), contrary to or inconsistent with section 4, section 5, section 26, section 27, section 28 paragraph two, section 29, section 50, section 57 and section 87 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)?

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1. Background and summarized facts

Srinakhorn Bank Public Limited Company, as plaintiff, filed a claim against Mr. Boonma, or Sompoj Sae-Lee or Sapmeethong, who was the defendant at the Thonburi Civil Court and the applicant of the present application. The claim was filed in connection with an overdraft agreement, loans, insurance premiums and mortgages. The plaintiff sought for the Court enforcement of the applicant's repayment of debts in the amount of Baht 2,679,659.12 together with interest at the annual percentage rate of 18.75 per cent on the principal sum of Baht 1,897,544.85 calculated as from the date following the date of case filing until all debts had been fully satisfied.

The applicant denied the plaintiff's claims and objected that the provisions in section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), and section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992), were encompassing, ineffective and lacked fairness. In addition, the enforcement of such laws did not correspond with the conditions of the national economy which was then facing an economic crisis. The laws also promoted and supported the plaintiff bank and other commercial banks in their exercise of rights and liberties to unfairly engage in a monopolistic enterprise or occupation, manipulate the monetary economy and take advantage of consumers, contrary to or inconsistent with section 50, section 57 and section 87 of the Constitution. The provisions of such laws also restricted the rights and

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liberties of a person under section 4, section 5, section 26, section 27, section 28 paragraph two and section 29 of the Constitution. A request was therefore submitted to refer the objection to the Constitutional Court for a ruling.

2. Preliminary issue

Could the Constitutional Court accept the application for consideration under section 264 of the Constitution?

The Constitutional Court held that this was a case where the applicant submitted an application to the Thon Buri Civil Court that section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), and section 4 and section 6 of the Interest on Loans by Financial Institutions Act, B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992), were contrary to or inconsistent with section 4, section 5, section 26, section 27, section 28 paragraph two, section 29, section 50, section 57 and section 87 of the Constitution and were provisions which the Court was going to apply to a case. In addition, there had not yet been a ruling of the Constitutional Court relevant to such provisions. When the Thonburi Civil Court referred the objection of the applicant to the Constitutional Court, the Constitutional Court could therefore accept the matter for consideration under section 264 of the Constitution.

3. The issues considered by the Constitutional Court

(1) Whether or not section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), was contrary to or inconsistent with section 4, section 5, section 26, section 27, section 28 paragraph two, section 29, section 50, section 57 and section 87 of the Constitution.

(2) Whether or not section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992), were contrary to or inconsistent with section 4, section 5, section 26, section 27, section 28 paragraph two, section 29, section 50, section 57 and section 87 of the Constitution.

The Constitutional Court held the following opinion. Section 4 of the Constitution provided the general principles that human dignity, rights and liberty of the people should be protected. Section 5 of the Constitution provided that the Thai people, irrespective of their origins, sexes or religions, enjoyed equal protection. Section 26 of the Constitution provided that in the exercise of powers by all State authorities, regard should be had to human dignity, rights and liberties in accordance with the provisions of the Constitution. Such exercise of powers by State authorities included the authority exercising legislative powers, i.e. the National Assembly, the authority exercising executive powers, i.e. the Council of Ministers,

the authority exercising judicial powers, i.e. the Courts, or other authorities. Section 4 and section 6 of the Interests on Loans by Financial Institutions, B.E. 2523 (1980) conferred powers on the Minister of Finance to prescribe the interest rates chargeable on loans by financial institutions to borrowers or payable to the lenders at a rate higher than the annual percentage rate of 15 per cent. In this regard, section 654 of the Civil and Commercial Code would not apply to the calculation of interest rates prescribed by the Minister of Finance. Section 4 and section 6 of the said Act did not in any manner constitute a breach of human dignity, rights and liberties of a person under section 4, section 5 and section 26 of the Constitution.

Section 27 of the Constitution provided that the rights and liberties expressly recognized by the Constitution or by implication or by rulings of the Constitutional Court should be protected and directly binding on the National Assembly, the Council of Ministers, Courts and other State organs in enacting, applying and interpreting laws. After consideration, the Constitutional Court held that section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980) did not contain any provisions which were contrary to or inconsistent with section 27 of the Constitution.

Section 28 paragraph two of the Constitution provided that a person whose rights and liberties recognized by the Constitution were violated could invoke the provisions of the Constitution to bring a lawsuit or to defend himself or herself in Court. This provision provided for the protection of rights and liberties by the Court. After a consideration of section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), the Constitutional Court held that such sections of the Act did not contain any provisions which deprived a person of the right to bring a lawsuit or raise a defence in Court under section 28 paragraph two of the Constitution.

Section 29 of the Constitution provided that the restriction of such rights and liberties as recognized by the Constitution could not be imposed on a person except by virtue of provisions of the 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. After a consideration of section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), the Constitutional Court held that such sections of the Act did not contain any provisions which affected the essential substance of rights and liberties under section 29 of the Constitution.

Section 50 of the Constitution provided for the protection of liberties of a person to engage in an enterprise or an occupation and to undertake a fair and free competition. The restriction of such liberties could not be imposed except by virtue of a law specifically enacted for a purpose such as the maintenance of security and safety of the State or economy of the country. Section 87 of the Constitution provided that the State should encourage a free economic system through market force, ensure and supervise fair competition, protect consumers, and prevent direct and indirect monopolies, etc. After considering the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), it could be concluded that the Act was enacted in order to allow State authorities to use interest rates as a mechanism for

the formulation of monetary policies in solving various economic problems of the country. Section 4 and section 6 of the said Act conferred powers on the Minister of Finance, by the advice of the Bank of Thailand, to prescribe interest rates chargeable on loans by financial institutions to borrowers or payable to the lenders at a rate higher than the annual percentage rate of fifteen per cent. In this regard, section 654 of the Civil and Commercial Code would not apply to the calculation of interest rates prescribed by the Minister of Finance. Therefore, there were no provisions in those sections of the Act which were contrary to or inconsistent with section 50 and section 87 of the Constitution.

Section 57 paragraph one of the Constitution stated that “the right of a person as a consumer shall be protected as provided by law” and section 57 paragraph two stated that “the law under paragraph one shall provide for an independent organization consisting of representatives of consumers for giving opinions on the enactment and issuance of law, rules and regulations and on the determination of various measures for consumer protection.” Such provisions laid down the general principle for the protection of the rights of a person as a consumer. However, the rules and procedures for such protection would be in accordance with provisions of law. In this regard, the Constitution provided that such laws enacted should provide for an independent organization which should also consist of representatives of consumers. From the facts, it appeared that the National Assembly had not yet enacted such a law. Nevertheless, the Consumer Protection Act, B.E. 2522 (1979), which came into force prior to the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), was enacted due to the need to provide a general protection of the rights of consumers. The Act prescribed certain duties on trade business operators and advertisers to consumers in order to offer the appropriate fairness to consumers. The Act also established an appropriate State organization to inspect, supervise and coordinate the operations of various State agencies in providing consumer protection. On the other hand, section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980) were provisions which conferred powers on the Minister of Finance to prescribe interest rates for financial institutions. Such provisions of the Act did not provide for the protection of rights of a person as a consumer and was therefore neither contrary to nor inconsistent with section 57 of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court, by the majority votes of 11 Constitutional Court judges, held that section 14 of the Commercial Banking Act, B.E. 2505 (1962), as amended by the Commercial Banking Act (No. 2), B.E. 2522 (1979), and section 4 and section 6 of the Interests on Loans by Financial Institutions Act, B.E. 2523 (1980), as amended by the Interests on Loans by Financial Institutions Act (No. 3), B.E. 2535 (1992), were neither contrary to nor inconsistent with section 4, section 5, section 26, section 27, section 28 paragraph two, section 29, section 50, section 57 and section 87 of the Constitution.

A minority of 4 Constitutional Court judges considered that the application should be dismissed.
