

Summary of the Constitutional Court Ruling No. 59/2545

Dated 26th November B.E. 2545 (2002)*

Re : The President of the Senate referred the opinion of Senators to the Constitutional Court for a ruling under section 262 paragraph one sub-paragraph (1) of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) in the case where the Ores Bill (No. ..), B.E. (....) contained provisions contrary to or inconsistent with the Constitution.

.....

1. Background and summarized facts

The President of the Senate referred the opinion of Senator Mr. John Uengpakorn and company, a total of 77 senators, to the Constitutional Court for a ruling under section 262 paragraph one sub-paragraph (1) of the Constitution that draft section 88/3 and draft section 88/7 of the Ores Bill (No. ..), B.E. (....) contained provisions which were contrary to or inconsistent with the Constitution. In summary:

(1) Draft section 88/3 stated that in order to conduct underground mining underneath any land which was not vacant, if the depth of such mine did not exceed one hundred meters, the applicant of a grant should produce evidence to the competent official that the applicant had the right to conduct ore mining in such land area. In other words, underground mining at a depth of more than one hundred meters from the surface could be conducted without the consent of the landowner and without having to compensate such landowner. Such provision was inconsistent with the exception provided for the restriction of rights under section 29 paragraph one and section 48 paragraph one of the Constitution. This was an annulment of the landowner's domain of ownership held in the land used resulting in the inability of the landowner to exercise his rights of land use and disposal, which were essential elements of rights in land. As a result, draft section 88/3 of the Ores Bill (No. ..), B.E. (....) was contrary to or inconsistent with section 48 of the Constitution.

(2) Draft section 88/7 stated that the environmental impact analysis report prepared by the applicant for an underground mining grant should receive an approval under the law on environmental enhancement and conservation whereas such law did not contain any of the elements in section 56 paragraph two of the Constitution. Moreover, the conduct of a hearing of interested persons would only commence after the completion of the environmental

* Published in the Government Gazette, Vol. 120, Part 81a, dated 28th August 2546 (2003)

impact analysis report by the applicant of the underground mining grant. Hence, such environmental impact analysis report was, right from its initial stages, deficient of a process for the participation of the traditional people and community in the maintenance and the use of natural resources and the environment in a balanced and sustainable manner intended by the provisions of the Constitution. Therefore, draft section 88/7 of the Ores Bill (No. ...), B.E. (....) was contrary to or inconsistent with section 46 and section 56 of the Constitution.

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the President of the Senate's reference of such senators' opinion to the Constitutional Court for ruling was in accordance with section 262 paragraph one sub-paragraph (1) of the Constitution.

The Constitutional Court held as follows. After the approval of the Ores Bill (No. ...), B.E. (....) by the National Assembly and prior to the Prime Minister's presentation of such Bill to the King for signature under section 93 of the Constitution, the President of the Senate referred the opinion of 77 senators to the Constitutional Court for a ruling, during which there were 499 members of the House of Representatives and 200 senators, or a total of 699 members. 77 senators therefore constituted not less than one-tenth of the total number of existing members in both Houses. Hence, when such senators submitted an opinion to the President of the Senate and the President of the Senate referred the opinion to the Constitutional Court for a ruling that section 88/3 and section 88/7 of the Ores Bill (No. ...), B.E. (....) contained provisions which were contrary to or inconsistent with the Constitution, the case was in accordance with section 262 paragraph one sub-paragraph (1) of the Constitution. The Constitutional Court had the power to accept this application for consideration.

3. The issues considered by the Constitutional Court

The Constitutional Court considered the application and invited the relevant persons, viz the Council of Ministers, Mr. John Uengpakorn and company, representatives of the Department of Earth Minerals, Mr. Kaewsan Atipote, senators and representatives of the Department of Underground Water, to submit opinions as part of the consideration. The following issues required ruling:

The first issue was whether or not section 14 of the Ores Bill (No. ...), B.E. (....) in the part where section 88/3 was added to the Ores Act, B.E. 2510 (1967) contained provisions which were contrary to or inconsistent with section 48 of the Constitution.

The second issue was whether or not section 14 of the Ores Bill (No. ...), B.E. (....) in the part where section 88/7 was added to the Ores Act, B.E. 2510 (1967) contained

provisions which were contrary to or inconsistent with section 46 and section 56 of the Constitution.

The Constitutional Court held the following opinion:

On the first issue, even though draft section 88/3 did not have the force of requiring an applicant for a grant for underground mining at a depth which exceeded one hundred meters to acquire the prior permission of the landowner, the provision did not imply the annulment of the domain of ownership at depths of more than one hundred meters. When the provision was considered in conjunction with the part of the Ores Bill (No. ..), B.E. (...) which added Part 4 on the protection of rights in immovable property, it could be ascertained that the Bill still gave protection to the domain of ownership of those who suffered damage from underground ore mining at every level of depths where the mining process was not in accordance with that prescribed in the grant. The prescription of non-requirement of permission from the landowner for mining at depths of more than one hundred meters was only a restriction of rights of land use in the domain of ownership to the extent which the landowner could use the land. The provision did not provide for the annulment of domain of ownership at depths which exceeded one hundred meters because at that moment, the use of land at such depths was beyond the capacity of the typical person.

On the second issue, draft section 88/7 provided for a rule in relation to the issue of an underground mining grant that the applicant should prepare an environmental impact analysis report. When such report received an approval under the law on enhancement and conservation of the environment, the Minister was required to consolidate the data on the project submitted with the grant application and the report into a hearing process for interested persons under the rules prescribed by law or official regulations. As regards the submission of opinions by representatives of private environmental organizations and representatives of relevant higher educational institutions, compliance with the law was required but at that stage there were no laws which provided details on such matter. At the end of the hearing process and after the receipt of a report from the hearing committee, the minister would consider the addition of conditions to the grant. This process was consistent with section 56 of the Constitution. Although the Constitution guaranteed the rights of persons forming a traditional community, or the rights of a person to participate in the government and the community, this did not mean that the community could manage local resources independently. The community had to conjoin with the local organization or the State in the joint management of property. Therefore, the prescription by draft section 88/7 of the requirement of an environmental impact analysis report, regardless of the stage at which a hearing was conducted for interested persons in order to determine the conditions for the grant, offered a sufficient opportunity for the community to jointly manage property with the State in relation to the maintenance and the use of natural resources and the environment in a balanced and sustainable manner.

4. Ruling of the Constitutional Court

By virtue of the reasons above, the Constitutional Court held that:

Section 88/3 of the Ores Bill (No. ..), B.E. (...) did not contain any provision which was contrary to or inconsistent with section 48 of the Constitution.

Section 88/7 of the Ores Bill (No. ..), B.E. (...) did not contain any provision which was contrary to or inconsistent with section 46 and section 56 of the Constitution.
