

Summary of Constitutional Court Ruling No. 15/2549

Dated 22nd August B.E. 2549 (2006)*

Re: Whether or not section 156 paragraph five of the Civil Procedure Code was contrary to or inconsistent with section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

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1. Summary of Background and Facts

The court of first instance gave a judgment ordering Mr. Chumpol Kantawiworn and others to jointly repay loan debts to the plaintiff, Saha Thanakarn Bank Public Company Limited, in the amount of 4,620,000 baht together with interests. The applicant and others appealed to the Court of Appeals along with a motion to appeal as a pauper. The court of first instance ordered that the applicant and others were not completely impoverished and it was likely that they could still afford a portion of the court fees and therefore granted leave to the applicant and others to proceed in the case as paupers in the Court of Appeals whereby they were exempt only from providing a deposit of the court fees and attorney fees payable to the plaintiff in the submission of the appeal. As for the fees in the Court of Appeals, the applicant and others had to provide a deposit within 20 days.

The applicant and others appealed the court of first instance's order to the Court of Appeals. The Court of Appeals ordered that the applicant and others were engaged in work and earned incomes. Thus, they were able to acquire funds for the court fees and were not impoverished to the extent of not being able to pay the court fees in the Court of Appeals. The court of first instance's order was therefore proper and the appeal was dismissed.

The applicant and others appealed the Court of Appeal's order to the Supreme Court. The court of first instance ordered that the Court of Appeal's order was final under section 156 paragraph five of the Civil Procedure Code. The appeal to the Supreme Court was therefore rejected.

The applicant and others submitted an appeal of the court of first instance's order rejecting the appeal to the Supreme Court and objected to the Supreme Court that section 156 of the Civil Procedure Code provided for an impoverished party to have the right to file a lawsuit or participate in court proceedings, and that the court should order the waiver of court

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fees in order to provide the party with an opportunity to fully participate in such proceedings. In this regard, if the law provides that a party had to pay court fee costs in every case, an impoverished person with insufficient funds or other assets to pay the court fees would be deprived of such right or opportunity. The court of first instance's order which rejected the appeal to the Supreme Court was therefore a deprivation of the applicant's and others' rights contrary to or inconsistent with section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), which prohibited the enactment of laws that amounted to a restriction of the people's rights and liberties, and that the Thai people should be subject to the same laws and enjoy equal protection under the law.

The Supreme Court ordered that in this case the court of first instance had applied the provisions of section 156 paragraph five of the Civil Procedure Code as the governing principle for rejecting the appeal to the Supreme Court submitted by the applicant and others. The Supreme Court had to apply such provisions of law to this case. Thus, this case was an objection that a provision of law to be applied by the court to a case was contrary to or inconsistent with the Constitution and there had not yet been a ruling of the Constitutional Court with respect to such provisions. A temporary stay was therefore imposed on the case and the objection submitted by the applicant and others be transmitted through official channels of the Office of the Judiciary to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Preliminary Issue

The Constitutional Court held that as the Supreme Court was going to apply the provisions of section 156 paragraph five of the Civil Procedure Code to the case, the case was therefore in accordance with the provisions of section 264 paragraph one of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The Constitutional Court thus had the power to admit this application for consideration.

3. Issue Considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 156 paragraph five of the Civil Procedure Code was contrary to or inconsistent with section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court held as follows. Section 29 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) provided a guarantee on the security of rights and liberties of a person recognized by the Constitution that could not be restricted except by virtue of specific provisions of law as provided under the Constitution, and was permitted only to the extent of necessity without affecting the essential substances of the rights and liberties. Such provision provided for the protection of a person's rights and liberties such that the National Assembly could enact a law to restrict the rights and liberties of persons only under the rules provided under the Constitution. Such laws should have a general

application and not be directed to any particular case or person. Section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), on the other hand, was a provision on the protection of rights and liberties of the Thai people under the principle that persons were equal before the law and received equal protection under the law. Unfair discrimination against a person on account of differences in origin, race, language, sex, age, physical or health conditions, personal status, economic or social standing, etc. was prohibited.

Section 156 of the Civil Procedure Code was a provision relating to a motion to proceed in a case as a pauper. Normally, in a civil proceeding, the parties or persons involved in a case had to pay expenses to the court called a court fee, such payment to be made to the court when filing a lawsuit or defending a case, and such fee must be paid at every court level. However, if a person was impoverished and lacked the funds for payment of fees, a motion could be filed to proceed in the case as a pauper.

The court of first instance made an order on costs of fees which the applicant and others had motioned to proceed in the case as paupers, waiving only the court fees and attorney fees payable to the plaintiff that had to be deposited with the appeal. But as regards the court fees in the Court of Appeals, a deposit had to be made within 20 days. The Court of Appeals found that the order was proper and therefore ordered the dismissal of the motion. In relation to the applicant's appeal of the court of first instance's order which granted a partial waiver of fees in the Court of Appeals and the Court of Appeals' affirmation which was deemed as final, the Constitutional Court found that prior to a court order directing a party to proceed in the case as a pauper, the court was required to carry out an inquiry to determine on the facts that the party was actually impoverished. Upon such a determination, the court would order that the party motioning to proceed as a pauper be exempt from court fees in the Court of Appeals, or if the party was able to pay a portion of the fees in the Court of Appeals, the court of first instance could waive a portion of such fees. When making such an order, the court of first instance must take into account the reasons and necessities for a party to proceed in the case as a pauper so as to ensure justice for both parties. Upon an order of the court of first instance, the party motioning to proceed in the case as a pauper would have the right to submit an appeal to the Court of Appeals. Such order of the Court of Appeals was final. The reasons behind such provision was to enable the Court of Appeals to review the court of first instance's order so as to ensure due consideration and fairness to the party motioning to proceed in the case as a pauper in the Court of Appeals. The Court of Appeals' order was deemed as final because the question of whether or not a person was impoverished had already been considered by two courts and this question was not a direct issue in the case. It was therefore appropriate to deem the determination in the Court of Appeals as final and prevent unnecessary delays in the Supreme Court, which was appropriate and fair to the parties. Although such a case imposed a certain restriction of rights, the restriction was imposed only to the extent of necessity and did not affect the essential substance of the right and liberty. Moreover, the provision was generally applicable and not directed to any particular case or person. The provisions applied equally to the parties. All parties were treated equally and enjoyed equal protection under the law without any regard to the statuses of the parties.

4. Ruling of the Constitutional Court

The Constitutional Court, by unanimous vote, held that section 156 paragraph five of the Civil Procedure Code was neither contrary to nor inconsistent with section 29 and section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
