

Summary of Constitutional Tribunal Ruling No. 8/2550

Dated 26th July B.E. 2550 (2007)*

Re: Whether or not section 225 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 26, section 27, section 28 and section 64 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)?

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1. Summary of background and facts

The Supreme Court referred the application of a defendant in a civil case requesting for a Constitutional Court ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). The application could be summarized as follows. Ban Pho Tambon Administrative Organization, the plaintiff, filed a suit against Mr. Somsak Rojanastapornkij, a local official of the plaintiff, as defendant in the Suphanburi Sub-District Court alleging that the defendant had committed a disciplinary offence and therefore the plaintiff ordered the expulsion of the defendant from official service as well as issued a claim for the return of sums received by the defendant whilst in office. The defendant filed a reply in the case. The Suphanburi Sub-District Court gave judgment that the plaintiff's order expelling the defendant from official service was a lawful order, but the plaintiff did not have the right to claim the sums and interests from the defendant. Thus, plaintiff's claims were dismissed. The defendant appealed. The Court of Appeals decided that the defendant's appeal did not contain matters which called for a ruling under section 225 paragraph one of the Civil Procedure Code, thus the defendant's appeal was dismissed.

The defendant appealed against the judgment of the Court of Appeals to the Supreme Court. An objection was also filed that section 225 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 26, section 27, section 28 and section 64 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Constitutional Court admitted the application for consideration on 26th July B.E. 2548 (2005). The case was pending trial when the Council for Democratic Reform with the King as Head of State declared the abolishment of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) on 19th September B.E. 2549 (2006) and the abolishment of the Constitutional Court along with the Constitution. Subsequently, the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) was promulgated on 1st October B.E. 2549

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(2006), wherein section 35 paragraph one provided that matters provided by law as the powers of the Constitutional Court or problems on whether or not a law was inconsistent with the Constitution should be the powers of the Constitutional Tribunal and section 35 last paragraph transferred all cases or matters pending proceedings in the Constitutional Court prior to 19th September B.E. 2549 (2006) to the powers and responsibilities of the Constitutional Tribunal.

2. Preliminary issue

The Constitutional Tribunal considered the preliminary issue of whether or not, whilst the defendant had objected that section 225 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 26, section 27, section 28 and section 64 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), but at that time, the Constitution of the Kingdom of Thailand B.E. 2540 (1997) had already lapsed, the Constitutional Tribunal was required to rule on the defendant's objection.

After consideration, the Constitutional Tribunal held as follows. The defendant filed an application requesting for a referral of an objection that a law which was to be applied by the court to a case was contrary to or inconsistent with the Constitution to the Constitutional Court for ruling. On 19th September B.E. 2547 (2004), when the defendant filed the application, the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was still in force. If the provision of law objected by the defendant was contrary to or inconsistent with the Constitution, such provision would lapse and be rendered inapplicable to the defendant's case which was still pending trial. Therefore, the Constitutional Tribunal had the power to consider such application.

3. Issue considered by the Constitutional Tribunal

The issue considered was whether or not section 225 paragraph one of the Civil Procedure Code was contrary to or inconsistent with section 26, section 27, section 28 and section 64 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The following considerations were made of the provisions of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Section 26 provided that the exercise of powers by all state agencies had to pay due regard to human dignity and rights and liberties as provided by the Constitution. Section 27 provided that the rights and liberties recognized by the Constitution expressly, by implication or ruling of the Constitutional Court enjoyed protection and were directly binding on the National Assembly, Council of Ministers, Courts and other state agencies in the enactment, application and interpretation of laws. Section 28 recognized a person's ability to raise human dignity or the exercise of one's rights and liberties to the extent that the rights and liberties of others were not violated, that is not detrimental to the Constitution or inconsistent with the good morals of the people, as well as allowing a person whose rights and liberties recognized by the Constitution were violated to

invoke the provisions of this Constitution in exercising rights in courts or raising a defence in court proceedings. Finally, section 64 gave recognition and protection to military officials, police officials, government officials, other state officials, local officials and officials or employees of state agencies in their exercise of rights and liberties in the same manner as other persons generally, except where restricted by laws, rules or regulations issued by virtue of specific provisions of law with respect to politics, capacity, discipline or codes of conduct. In the case under consideration, section 225 paragraph one of the Civil Procedure Code provided that “a point of fact or point of law raised in an appeal must be expressly stated by the party in the appeal and must be a point which has already been duly raised in the Court of First Instance and must raise a substantial point in the case which requires a decision.” Such provision stated the rules and conditions for appeal which had to be satisfied by a party or related person wishing to exercise the right to appeal a judgment or order of the Court of First Instance in the interest of justice in the legal proceedings of all parties and related persons whose rights or duties had been objected or in the case of a general exercise of judicial rights. All appeals had to state in detail the points of facts or points of law and the issues raised in the appeal had to be an issue that had already been duly contested in accordance with the proceedings of the Court of First Instance and the Court of First Instance must have already decided on such point of fact or point of law. In any event, a new issue could not be raised. As for the rule that an appeal on a point of fact or point of law must raise a substantial point in the case which called for a decision, the words “point of fact or point of law which is not substantial” meant a point of fact or point of law which was neither decisive on the result of nor beneficial to the case, or did not have the effect of altering the judgment of the court.

If an issue raised by the Court of Appeal for ruling did not alter the outcome of the case, such issue would not be considered as an issue or question which called for a decision. Nevertheless, such provision only provided the scope of appeal to within the limits provided by law. The provisions were not absolute since section 225 paragraph two of the Civil Procedure Code stated that “if a party did not raise a question on public order in the Court of First Instance, or a party was not able to raise a question of law in the Court of First Instance due to circumstantial limitations, or due to a cause of non-compliance with the provisions on appeal procedures, the relevant party shall have the right to raise such question.” Such provision was an exception to section 225 paragraph one. It provided the parties the right to raise certain questions on appeal to the Court of Appeals or the Supreme Court regardless of the fact that such questions had not been raised in the Court of First Instance. The provisions of section 225 of the Civil Procedure Code therefore granted the parties equal rights of participation on legal proceedings wherein such provisions on appeal must be complied with in order to enable the proceedings of Court of Appeals to be carried out expediently, transparently and fairly. Points of law and points of facts which were insubstantial to the case were also prevented from reaching the trial procedures of the court since such matters would delay the trial proceedings and unbeneficial to the parties to the case. These procedures protected the rights of persons who were parties in the case and prevented any delay in proceedings. Therefore, section 225 paragraph one of the Civil Procedure Code was a

provision which did not in any manner restricted the rights of a person or diminished the values of human dignity. The provision was binding on agencies exercising sovereign powers and other State agencies in the application of such law. Section 225 paragraph one granted the right to a person to sue and defend cases in court, giving equal rights to members of the public generally as well as military, police and government officials, other state officials, local officials and officials or employees of state agencies provided only that the rules and conditions prescribed in the interest of justice were complied with.

4. Ruling of the Constitutional Tribunal

The Constitutional Tribunal held that section 225 paragraph one of the Civil Procedure Code was neither contrary to nor inconsistent with section 26, section 27, section 28 and section 64 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
