

Summary of Constitutional Court Ruling No. 11/2550

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

Re: Whether or not section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 5, section 28, section 30, section 88 and section 276 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997)?

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1. Summary of background and facts

Mr. Pramut Sutabutr, the plaintiff, filed a plaint in the Administrative Court of First Instance (Central Administrative Court) in Case No. 469/2546 stating that the plaintiff had originally filed a plaint against the Selection Committee for National Telecommunications Commissioners requesting for a judgment in favour of the plaintiff's selection in the list of appropriate persons for selection as National Telecommunications Commissioners and that the Administrative Court of First Instance (Central Administrative Court) gave judgment on 7th February B.E. 2545 (2002) revoking the Notification of the Selection Committee for National Telecommunications Commissioners Re: List of Selected Persons for Nomination as National Telecommunications Commissioners. The plaintiff filed an appeal to the Supreme Administrative Court stating that the plaintiff had motioned for the court to order the respondent to amend the list of persons in order to include the plaintiff as a selected person, but the court only ordered the revocation of the said Notification. The Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance (Central Administrative Court) on 27th December B.E. 2545 (2002).

The plaintiff acknowledged the Supreme Administrative Court's judgment on 10th January B.E. 2546 (2003), which was thus deemed as the day when the plaintiff became aware of the unlawful act of the Selection Committee for National Telecommunications Commissioners, being an act of violation against the plaintiff resulting from the exercise of legal powers and causing detriment and loss to the plaintiff. The plaintiff filed a plaint claiming damages at the Administrative Court of First Instance (Central Administrative Court) on 27th March B.E. 2546 (2003). The Administrative Court of First Instance (Central Administrative Court) held that the plaintiff had filed an earlier plaint on 10th April B.E. 2544 (2001), and therefore the latest date which the plaintiff acquired knowledge of the cause of

* Published in the Government Gazette Vol. 125, Part 6a, 10th January B.E. 2551 (2008).

action for claiming damages was some date prior to the plaintiff's plaint on 10th April B.E. 2544 (2001). As of the filing date of this case, i.e. 27th March B.E. 2546 (2003), the one year period for the case had expired under section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999). The plaint was therefore dismissed and expunged from the court dockets.

The plaintiff filed an application to the Supreme Administrative Court that the periods for plaint filing under section 49 and section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures were contrary to or inconsistent with section 5, section 6, section 27, section 28, section 29, section 30, section 62, section 75, section 88 and section 276 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). It was requested that the Supreme Administrative Court refer the plaintiff's opinion to the Constitutional Court for ruling.

After consideration, the Supreme Administrative Court held that in giving a judgment or order in this case, the Supreme Administrative Court was required to apply section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 (1999) to the case. An issue of objection therefore arose as to whether or not such provision was contrary to or inconsistent with section 5, section 28, section 29, section 30, section 88 and section 276 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997). Also, there did not appear to be a ruling of the Constitutional Court in relation to such provision. Therefore, a temporary stay was imposed on the proceedings and the opinion of the plaintiff (Mr. Pramut Sutabutr) was referred to the Constitutional Court for ruling under section 264 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

2. Preliminary issue

Due to the subsequent Announcement of the Council for Democratic Reform No. 3, dated 19th September B.E. 2549 (2006) which repealed the Constitution of the Kingdom of Thailand B.E. 2540 (1997) and abolished the Constitutional Court, followed by the Royal Promulgation of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006), and thereafter during trial of the case, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated to replace the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) on 24th September B.E. 2550 (2007), a preliminary issue therefore arose as to whether or not the Constitutional Court had the power to resume the trial and adjudication of this case.

After consideration, the Constitutional Court held as follows. Section 35 paragraph one of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) stated that "all matters provided by law as powers of the Constitutional Court or a problem which arises on whether or not a law is inconsistent with the Constitution shall be the powers of the Constitutional Tribunal..." and section 35 paragraph four stated that "all cases or matters pending proceedings in the Constitutional Court prior to 19th September B.E. 2549 (2006)

shall transfer to the powers and responsibilities of the Constitutional Tribunal.” This case was therefore transferred to the powers of the Constitutional Tribunal under section 35 paragraph one and paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006).

Thereafter, the Constitution of the Kingdom of Thailand B.E. 2550 (2007) was promulgated to replace the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006), wherein section 300 provided that the Constitutional Tribunal under the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) shall be the Constitutional Court, and the provisions of section 35 paragraph two, paragraph three and paragraph four of the Constitution of the Kingdom of Thailand (Interim) B.E. 2549 (2006) continued to be in force until the promulgation of the Organic Act on Constitutional Court Procedures. In the meantime, all cases or matters pending proceedings in the Constitutional Tribunal shall be resumed by the Constitutional Court. This case was therefore within the powers of the Constitutional Court under section 300 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The Constitutional Court had the power to carry out the further trial and adjudication of this application.

3. Issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was contrary to or inconsistent with section 5, section 28, section 30, section 88 and section 276 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

After consideration, it was held as follows. Section 5 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was a provision on equality under the Constitution without regard to origin, sex or religion. Section 5 was also a general provision and therefore did not contain any substance for section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) to be contrary to or inconsistent with. Section 28 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was a provision which recognized a person’s right to rely on human dignity or the exercise of rights and liberties to the extent that the rights and liberties of other persons were not violated, as well as guaranteeing such person’s rights. Whenever the right of a person recognized by the Constitution was violated, such person would be able to exercise rights in court or invoke such rights as arguments in court. Section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was a provision on the time period for filing cases, providing that a plaintiff in a dispute involving a violation or other liabilities under section 9 paragraph one subparagraph (3) and cases involving administrative contracts under section 9 paragraph one subparagraph (4) should file a case at the Administrative Court within one year as from the date of notice or imputed notice of the cause of action. It was apparent that the plaintiff was given the right to file a case which was consistent with the provisions of section 28 of the Constitution of the Kingdom of Thailand

B.E. 2540 (1997). As for section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997), such section provided for the equality of all persons under the law as well as equal protection under the laws applicable to such persons. In other words, if a plaintiff filed a case in the Administrative Court, the trial proceedings would be equally applicable to all persons filing cases in the Administrative Court. The provisions of section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) therefore did not provide for different rights pertaining to the filing of cases in courts and were therefore not in any manner inconsistent with section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

Section 88 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997) was a provision on the directive principles of fundamental State policies, which was deemed as a directive provision for the enactment of laws and the determination of national administration policies of the government. Section 276 was a provision on the adjudicative jurisdiction of the Administrative Courts and levels of Administrative Courts. On the other hand, section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was a provision on the time period for filing cases, being a substance or matter which was neither relevant to the directive principles of fundamental State policies nor the adjudicative jurisdiction of the Administrative Courts that could be contrary to or inconsistent with section 88 and section 276 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

4. Ruling of the Constitutional Court

By virtue of the reasons stated above, the Constitutional Court held that section 51 of the Act on Establishment of Administrative Courts and Administrative Court Procedures B.E. 2542 (1999) was neither contrary to nor inconsistent with section 5, section 28, section 30, section 88 and section 276 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).
