

Summary of Constitutional Court Ruling* No. 47/2554 (2011)

Dated 21st December B.E. 2554 (2011)

Re: Whether or not section 52(3) of the Cooperatives Act B.E. 2542 (1999) was contrary to or inconsistent with section 39 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

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1. Summary of background and facts

Mr. Chalerm Pinsakul (applicant) submitted an application for a Constitutional Court ruling under section 212 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007). The facts under the application and supporting documents could be summarised as follows.

The applicant was a former Vice-Chairman of the Board of Agricultural Co-operative Federation of Thailand Limited. The Cooperatives Registrar received a report from the auditor of Agricultural Co-operative Federation of Thailand stating that the Agricultural Co-operative Federation of Thailand Limited operated at a loss for several consecutive years and had retained losses. The auditor of Agricultural Co-operative Federation of Thailand sent a letter to instruct the Chairman of the Agricultural Co-operative Federation of Thailand Limited to remedy the defects pursuant to section 47 of the Cooperatives Act B.E. 2511 (1968), but the Board of Agricultural Co-operative Federation of Thailand Limited failed to comply with the letter from the auditor. The Cooperatives Registrar therefore exercised powers under section 47(1) of the Cooperatives Act B.E. 2511 (1968) to remove the Board of Agricultural Co-operative Federation of Thailand Limited en masse. As a result, the applicant's office in the said board also terminated. Such law contained no provision which would in any way prohibit the applicant from being re-elected as a board member or to any office in a cooperative.

Later, Suphanburi Agricultural Cooperative Limited convened an annual general meeting on 27th August B.E. 2543 (2000). The annual general meeting passed a resolution to elect the applicant to the office of Chairman of Suphanburi Agricultural Cooperative Limited. However, the Vice Cooperatives Registrar issued Vice Cooperatives Registrar No. 2/2543 dated 13th November B.E. 2543 (2000) to annul such resolution of Suphanburi Agricultural Cooperative Limited's annual general meeting with respect to the election of the applicant to the office of Chairman of Suphanburi Agricultural Cooperative Limited due to the applicant's prior removal by order of the Registrar from the Board of Agricultural

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Co-operative Federation of Thailand Limited pursuant to section 47(1) of the Cooperatives Act B.E. 2511 (1968).

The applicant filed a plaint in the Administrative Court of First Instance for the revocation of Vice Cooperatives Registrar No. 2/2543 (2000) dated 13th November B.E. 2543 (2000). The Administrative Court of First Instance dismissed the plaint. The applicant appealed to the Supreme Administrative Court. The Supreme Administrative Court affirmed the judgment.

The applicant filed a letter of complaint with the Ombudsman, calling for fairness in the application of laws by the official of the Ministry of Agriculture and Cooperatives. The Chief Ombudsman, after consideration of the complaint, found that applicant had exhausted all rights in the Administrative Courts and that there was a final judgment of the Supreme Administrative Court on the matter of complaint, thus the Chief Ombudsman did not have the competence to admit the complaint for consideration.

The applicant filed a letter of complaint with the National Human Rights Commission calling for fairness in the case of the Vice Cooperatives Registrar ordering the annulment of the resolution of the annual general meeting of Suphanburi Agricultural Cooperative Limited. The National Human Rights Commission, after consideration of the complaint, found that the issue complained was identical to a matter already decided by court judgment. The case was therefore not within the competence of the National Human Rights Commission to take further action. The National Human Rights Commission therefore passed a resolution to reject the complaint.

Thereafter, on 6th August B.E. 2552 (2009), the applicant submitted an application to the Constitutional Court for a ruling under section 212 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) on whether or not section 52(3) of the Cooperatives Act B.E. 2542 (1999) was contrary to or inconsistent with section 39 of the Constitution.

2. Preliminary issue

The preliminary issue considered by the Constitutional Court was whether or not the application was submitted in accordance with the rules under section 212 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) in order to be admissible by the Constitutional Court.

Section 212 paragraph one of the Constitution provided that “a person whose right or liberty recognized under this Constitution has been violated shall have the right to submit an application to the Constitutional Court for a ruling that a provision of law is contrary to or inconsistent with the Constitution.” Paragraph two provided that “the exercise of right under paragraph one must be a case where all other remedies have been exhausted, as provided under the Organic Act on Constitutional Court Procedures.” Article 21 paragraph one of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007) provided

that “a person whose right or liberty recognized under the Constitution has been violated shall have the right to submit an application to the court for a ruling that a provision of law is contrary to or inconsistent with the Constitution.” Paragraph two provided that “the exercise of right under paragraph one must be a case where all other remedies have been exhausted, as provided under section 211, section 245(1) and section 257 paragraph one (2) of the Constitution.” Furthermore, article 17 provided that “the court shall have the competence to try and adjudicate the following cases: (14) a case requesting for a ruling that a provision of law is contrary to or inconsistent with the Constitution pursuant to an application submitted by a person whose right or liberty as recognized under the Constitution has been violated as provided under section 212 of the Constitution.”

The Constitutional Court found that a person who had the right to submit an application to the Constitutional Court pursuant to section 212 of the Constitution had to satisfy the rules and procedures provided by law, as follows:

(1) being a person whose constitutional right or liberty had been violated as a consequence of a provision of law;

(2) such person had to submit an application to the Constitutional Court for a ruling that the said provision of law was contrary to or inconsistent with the Constitution; and

(3) all other remedies available to such person had been exhausted.

The applicant was a person whose constitutional right had been violated as a result of a provision of law. The applicant submitted an application to the Constitutional Court for a ruling that the provision of law was contrary to or inconsistent with the Constitution. Moreover, this was a case where the applicant had already exhausted all other remedies as the case filed by the applicant in the Administrative Court was final. The applicant was thus unable to exercise the right under section 211 of the Constitution and had already submitted the matter to the Ombudsman pursuant to section 245(1) of the Constitution and the National Human Rights Commission pursuant to section 257 paragraph one (2) of the Constitution. The case was in accordance with section 212 of the Constitution in conjunction with article 21 and article 17(14) of the Rules of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court therefore admitted the application for ruling.

3. The issue considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 52(3) of the Cooperatives Act B.E. 2542 (1999) was contrary to or inconsistent with section 39 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

After deliberations, the Constitutional Court found that section 39 of the Constitution was a provision in Chapter 3 on the rights and liberties of the Thai people, Part 4 on the rights in the judicial process. Section 39 provided that a person should not be liable to criminal

sanctions unless he/she committed an act stipulated by a law in force at the time of its commission as an offence to criminal sanctions and the sanction imposed should not be heavier than the sanction prescribed by law in force at the time of the commission. In a criminal case, there was a presumption of innocence of the suspect or defendant, and prior to a final conviction, such person should not be treated as an offender. Section 39 was intended to protect the rights and liberties of a person in relation to criminal liabilities so as to prevent such person from being subject to a heavier criminal liability or sanction than stated by the law in force at the time of commission. The principle prohibited the application of a law to impose a criminal sanction or increase sanctions retrospectively to an act committed prior to the enactment of such provision of law. Furthermore, so long as the court had not yet reached a final conviction, there was a presumption that the suspect or defendant was innocent in the criminal case.

The Cooperatives Act B.E. 2542 (1999) was a special law, being a combination of administrative and commercial laws, but not a criminal law. The specific provisions in section 52(3) provided a disqualification for a person who had been removed from board membership or who had been removed from board membership by a final decision under section 22(4) from assuming the functions of a board member or manager. Therefore, the prohibition against becoming or assuming the functions of a board member or manager under section 52(3) of the Cooperatives Act B.E. 2542 (1999) did not in any part constitute a criminal law or criminal sanction since criminal sanctions as defined by section 18 of the Penal Code consisted of only execution, imprisonment, detention, fine and confiscation. Hence, section 52(3) of the Cooperatives Act B.E. 2542 (1999) was neither contrary to nor inconsistent with section 39 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).

4. Ruling of the Constitutional Court

The Constitutional Court therefore held that section 52(3) of the Cooperatives Act B.E. 2542 (1999) was neither contrary to nor inconsistent with section 39 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007).
