

Summary of Constitutional Court Ruling No. 33/2555 (2012)

Dated 7th November B.E. 2555 (2012)*

Re: Whether or not section 67 paragraph two of the Fertilizers Act B.E. 2518 (1975) was contrary to or inconsistent with section 43 and section 84(1) of the Constitution.

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1. Summary of background and facts

The State Attorney for Chumphon Province, as prosecutor, commenced an action against the defendant at Chumphon Provincial Court on charges of selling substandard chemical fertilizers in violation of section 3, section 30(2), section 33, section 67 and section 72/6 of the Fertilizers Act B.E. 2518 (1975). The defendant pleaded not guilty and objected that section 67 paragraph two of the Fertilizers Act B.E. 2518 (1975), which provided that a person who committed an act under paragraph one without knowing that the chemical fertilizer was substandard, deregistered by the Minister, or having toxic substances exceeding the level prescribed by a Minister's Notification, should be liable to a fine from four thousand baht to forty thousand baht, was inconsistent with the principle that a person would be criminally liable only where the act was committed intentionally. It was argued further that the provision restricted a person's liberty to engage in an occupation, contrary to the conditions prescribed by the Constitution, which was inconsistent with section 43 of the Constitution. Moreover, the provision was not consistent with economic necessity, and at the time of enactment, there was no necessity for the protection of state security, safeguard of common interests or public utility management. The provision was inconsistent with the state's fundamental economic policies under section 84(1) of the Constitution. Chumphon Provincial Court found that the defendant's objection was in accordance with section 211 of the Constitution. The matter was therefore referred to the Constitutional Court for a ruling.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to admit this application for a ruling under section 211 paragraph one of the Constitution.

This application raised an objection on whether or not section 67 paragraph two of the Fertilizers Act B.E. 2518 (1975) was contrary to or inconsistent with section 43 and section

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84(1) of the Constitution. Chumphon Provincial Court was going to apply this provision of law to a case and there had not yet been a ruling of the Constitutional Court in relation to such provision. The case was therefore in accordance with section 211 paragraph one of the Constitution in conjunction with clause 17(13) of the Constitutional Court on Procedures and Rulings B.E. 2550 (2007). The Constitutional Court ordered the admittance of this application for consideration.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 67 paragraph two of the Fertilizers Act B.E. 2518 (1975) was contrary to or inconsistent with section 43 and section 84(1) of the Constitution.

After deliberations, the Constitutional Court found as follows. The Fertilizers Act B.E. 2518 (1975) was a law enacted with the intent of controlling the production, sale and import or order of chemical fertilizers into the Kingdom to ensure good faith dealings, as well as to control the production of organic fertilizers to safeguard the interests of agriculturalists. This was needed because Thailand was an agricultural country. Agriculturalists required fertilizers as plant food or soil conditioners to promote greater productivity. At present, the amount of chemical fertilizers ordered from other countries for distribution and processing for distribution to agriculturalists was increasing every year. However, it appeared that chemical fertilizers distributed in the general market were frequently found to be counterfeit chemical fertilizers, substandard chemical fertilizers and deteriorated chemical fertilizers. Also, the weight of chemical fertilizers were less than the amount stated on the label. Plant nutrients did not match the information declared on the label. Agriculturalists were taken advantage of and profit expectations were unreasonable without regard to the loss incurred on the agricultural profession. This practice was also detrimental to the government's agriculture promotion policy. These controls included biological fertilizers and organic fertilizers which were substandard. Thus, offences and criminal sanctions were prescribed to enable the state to employ tools to regulate fertilizer traders from committing acts for unreasonable profit, and to safeguard agriculturalists' use of standard quality fertilizers without being taken advantage of by fertilizer traders.

Section 67 paragraph two of the Fertilizers Act B.E. 2518 (1975) was a measure which imposed a duty of care on fertilizer traders pursuant to professional standards, under which an inspection of the fertilizers should be inspected before sale to agriculturalists. This measure ensured that the control of sale and import of chemical fertilizers achieved the legislative purpose. Despite certain restrictions of a person's liberty to operate a business or engage in an occupation as recognised under section 43 paragraph one of the Constitution, such restriction of liberty was sanctioned by virtue of provisions of law permitted under section 43 paragraph two of the Constitution. In other words, the restriction of liberty was imposed in the interest of protecting consumers who were agriculturalists, regulating fertilizer traders and maintaining national economic security. In addition, the provisions

were in accordance with the rules under section 29 of the Constitution. The restriction of liberty was imposed only to the extent of necessity and the content thereof did not prejudice the essential substance of a person's liberty to operate a business or engage in an occupation since there was no absolute prohibition on fertilizer traders from operating their undertakings. These businesses should, however, be operated with care to avoid distribution of substandard fertilizers to agriculturalists. The provision of law applied generally without focus on application to any specific case or person. The provision was therefore neither contrary to nor inconsistent with section 43, and aimed at protecting consumers engaging in agriculture from being unfairly taken advantage of. The provision also did not impose any barrier or obstacle to the implementation of national economic policies which aimed to promote free and fair markets under market mechanisms, and to promote sustainable economic development. Thus, there was no case for section 67 paragraph two of the Fertilizers Act B.E. 2518 (1975) to be contrary to or inconsistent with section 84(1) of the Constitution.

4. Ruling of the Constitutional Court

The Constitutional Court held that section 67 paragraph two was neither contrary to nor inconsistent with section 43 and section 84(1) of the Constitution.
