

Report No. 481/2558 on the unfair treatment: the case of R Company Limited persuading people to invest with the consequence of a large amount of debt

● Issues of Complaint:

The complainant has requested the NHRCT to support in the mediation with R Public Company Limited (the Respondent) which registered the merger with C Public Company Limited. The company persuaded the complainant to invest in the poultry (hen) farming with price guarantee. Later, the complainant suffered a loss with a large amount of debt. The complainant requested to annul the contract and expected the executives of the company to find a solution. But the respondent filed a lawsuit against the complainant on the ground of default of the sale contract and for damages.

Decisions of NHRCT

NHRCT deemed that the problem of contract farming has affected a large number of agriculturists nationwide because of the more expansion of industrial agriculture or contract farming. Though, at the beginning, the joint business went well but the conditions of agreement were changed and the capitalist broke the contract. Agriculturists were not be able to revoke the contract due to less power of bargaining and less understanding and knowledge of contract. Disadvantages and the large amount of debt were brought to agriculturists and they could not earn their livings. This is considered as the degradation of human dignity which is prescribed in Constitution of the Kingdom of Thailand, Article 22 of the Universal Declaration of Human Rights and the obligation in which Thailand is a state party, i.e. Article 6 (1) of the International Covenant on Economic, Social and Cultural Rights. Moreover, there were provisions of the contract which prescribe that agriculturists must solely sell their products to this company. It was so easy for capitalists to control the market mechanism and agricultural products which are the sources of the food chain. Therefore, poor people could not access to enough food. In the long run, the food security will be compromised while having an emergency crisis. This contradicted the directives which is laid by the Food and Agriculture Organization of the United Nation (FAO) to promote the right to access to enough food, a part of the right to live with sufficient quality for oneself and family as prescribed in Section 253 of the Universal Declaration of Human Rights and Article 114 of the International Covenant on Economic, Social and Cultural Rights. Thus, policy recommendations or Recommendations on the revision of laws should be submitted to the Cabinet as follows:

Policy recommendations or Recommendations on the revision of laws

(1) The Cabinet should amend the Unfair Contract Terms Act to cover the contract farming, such as the equality for the termination of contract and liability among parties, the extension of time period in the contract to cover costs of agriculturists in

long run, the determination of standard pattern of contract and its inspection of the compliance, or the issuance of law which can organizing the action of contract farming for providing fairness to agriculturists.

(2) The Cabinet should improve the justice process in order that agriculturists can easily and rapidly access to the process for the prevention of disadvantages in contract farming when bargaining with capitalists, for instance the provincial public prosecutor examines the draft of contract before signing and the Chief of Trang Provincial Justice Office receives a complaint of unfairness or the central agency should be established to examine the draft of contract and the execution of the contract with transparency and effectiveness.

(3) The Cabinet should strengthen the bargaining power of the agriculturist, prevent the monopoly by promoting the gathering of agriculturist, exercise power to regulate the standard of factors of production (seeds, embryos or feed mill, vaccines and related equipment) which can be easily accessed by agriculturist with fair prices and quality control, and suppress the influential power over the market, the transportation system, storing and distribution channel by reducing the monopoly of the logistics operated by the company.

(4) There should be measures to perform contract farming which must be approved or have a mutual agreement with the community or local authority, especially the aspect of environmental friendly business.

(5) The Cabinet should provide the knowledge about the contract farming to agriculturists together with the precise and sufficient information for the decision to jointly invest in the form of contract farming and restrict the hype and public announcement of the company.

(6) The Cabinet should determine the incentives in the promotion of CSR in order to protect people from human rights violation and support the environmental friendly production.

(7) The Cabinet should push forward the fairness in the agricultural business system under the contract farming system by applying the principle of “Fair Trade.”

(8) The prevention and solution to the debt of agriculturists by the Bank of Thailand should emphasize on the supervision of agricultural credits which covers the contract farming by allowing the company to guarantee or approve before joining the project. There should be the amendment of the Farmer’s Reconstruction and Development Fund Act to cover the contract farming and the establishment of the mediation system for the dispute or non-compliance of provisions in the unfair contract together with the assistance provided to agriculturists when being filed a lawsuit on the contract farming.

Performance outcomes of the Cabinet and related government agencies

On 8th September 2015, the Cabinet adopted the resolution on acknowledging the outcome of the NHRCT consideration for policy recommendations and Recommendations on the revision of laws and assigned the Ministry of Agriculture and Cooperatives to be the central agency to consider together with the Ministry of Commerce, the Ministry of Interior, the Ministry of Justice and the Bank of Thailand for the consideration of studying the guideline or the appropriateness of such proposals and summarizing the outcome of consideration or the outcome of performance about such issues in general.

Later, on 3rd May 2016, the Cabinet adopted the resolution on acknowledging the performance outcome of the Ministry of Agriculture and Cooperatives. The key conclusion is that the Ministry of Justice has made a draft of the Unfair Contract Terms Act (No. ...) B.E. The Ministry of Justice has considered on the establishment of the mediation system for agriculturists to conveniently and rapidly access to the justice process. The Ministry of Commerce has controlled prices of goods to be at the reasonable level, including the supply of chemical fertilizers and feed mill with the aim of avoiding scarcity, according to the Price of Goods and Services Act B.E. 2542 [1999] There must also be the suppress of influential powers over the market and the monopoly by following the Trade Competition Act B.E. 2542 [1999]. The Ministry of Commerce has also asked for the cooperation from commerce provincial offices nationwide on the dissemination of knowledge on contract farming to agriculturists by coordinating with agricultural and cooperatives provincial office nationwide on the dissemination of sufficient knowledge on the investment in the contract farming together with the control of hype and public announcement of the company. The Ministry of Justice in cooperation with National Farmers Council (NFC) considers the plan for the solution to inequality and unfairness in the contract farming system and other problems in general. The Department of Rights and Liberties Protection has been assigned to be the responsible agency for the dissemination of legal knowledge to agriculturists who has not yet been filed a lawsuit, in trial and already in the process of legal execution. The government has issued the policy on the development of mediation system to be under the same standard. Therefore, the National Commission for Justice Administration Development is assigned to consider for the appropriateness and the guideline for the determination of the mediation procedure in order to be the central law which covers the non-compliance to the provisions prescribed in the unfair contract farming system, etc.