

Summary of the Constitutional Court Ruling No. 14-15/2543

Dated 4th April B.E. 2543 (2000)*

Re : The Phra Nakhon Si Ayutthaya Provincial Court referred the objections of the defendants to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The State Attorney for Phra Nakhon Si Ayutthaya province, as plaintiff, prosecuted Mr. Somchai Ketsak and Mr. Thew Rithora as defendants in Criminal Case No. 2260/2542 and Criminal Case No. 3359/2542 respectively. The defendants were charged with contraventions of orders of the Governor of Phra Nakhon Si Ayutthaya issued by virtue of the powers granted to him by the Prime Minister on matters regarding the suspension of fresh water shrimp farming in order to conserve the quality of the environment.

Both defendants, i.e. the applicants, objected to the Order of Phra Nakhon Si Ayutthaya Province No. 1649/2541 and Order of the Prime Minister No. 2/2541 as being unlawful orders under section 9 of the National Promotion and Preservation of Environmental Quality Act, B.E. 2535 (1992). It was claimed that such orders prohibited all systems of shrimp cultivation, a prohibition which impeached upon the rights of a shrimp farmer who had implemented good management system. Such orders were therefore considered as inconsistent with section 30 and section 50 paragraph two of the Constitution. The orders were referred to as being provisions of law enacted by the National Assembly, and not an administrative order issued by the Executive. As the National Promotion and Preservation of Environmental Quality Act, B.E. 2535 (1992) was a general law aimed at the enhancement and conservation of all types of environmental quality and not specifically concentrating on any particular aspect of the environment, the applicants were of the opinion that the orders, which originated from a resolution of the National Environmental Committee under section 12 of the National Promotion and Preservation of Environmental Quality Act, B.E. 2535 (1992), were also inconsistent with section 60 of the Constitution for not offering an opportunity to the people whose rights and liberties were affected to participate in the decision-making process of State officials in the performance of administrative functions. As a result, such orders were unenforceable under section 6 of the Constitution.

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The State Attorney submitted an objection to the Phra Nakhon Si Ayutthaya Provincial Court only in Criminal Case No. 2260/2542 that the provisions of law to be applied by the Court to the case were section 9 and section 98 of the National Promotion and Preservation of Environmental Quality Act, B.E. 2535 (1992). On the other hand, the Order of the Prime Minister and the Order of Phra Nakhon Si Ayutthaya Province were orders issued by virtue of the powers conferred by law and were not provisions of law which was applicable to a case by the Court. The objection of the applicant therefore lacked the required substance under section 264 paragraph two of the Constitution.

2. Preliminary issue

The Constitutional Court considered the applications of both applicants and the objection of the State Attorney and held that the issues raised were identical. As the Phra Nakhon Si Ayutthaya Provincial Court was the referrer of both objections to the Constitutional Court, the applications were therefore merged and considered together.

3. The issue considered by the Constitutional Court

The issue considered was whether or not Order of the Prime Minister No. 2/2541 and Order of Phra Nakhon Si Ayutthaya Province No. 1649/2541 were provisions of law which the Court was going to apply to a case under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and whether or not such orders were inconsistent with section 30, section 50 and section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held that the Order of the Prime Minister and the Order of Phra Nakhon Si Ayutthaya Province were not issued by an organ which exercised legislative powers. Hence, they were not provisions of law within the definition in section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) and not within the jurisdiction of the Constitutional Court pursuant to Constitutional Court Ruling No. 4/2542, dated 1st April B.E. 2542 (1999). It was therefore not necessary to rule on whether or not such orders were inconsistent with section 30, section 50 and section 60 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

4. Ruling of the Constitutional Court

The applications were dismissed.
