

Summary of the Constitutional Court Ruling No. 84/2547

Dated 16th November B.E. 2547 (2004)*

Re: The Supreme Administrative Court referred the objection of plaintiffs in Case No. 187/2546 of Chiang Mai Administrative Court to the Constitutional Court for a ruling under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997), in the case on section 45 paragraph four of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), being contrary to or inconsistent with section 26 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

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1. Background and summarized facts

The Supreme Administrative Court referred the objection of Mr. Orn U-nguen and others, the applicants, who filed a plaint against the Electricity Generating Authority of Thailand at the Chiang Mai Administrative Court in Case No. 187/2546 claiming compensation in the amount of 1,098,778,433 baht. The applicants filed plaints and requested for proceedings on an indigent basis in seeking an exemption from the court fees.

The Chiang Mai Administrative Court held that this was a case under section 9 paragraph one subparagraph (3) of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999). Section 45 paragraph four of such Act provided that the applicants were obliged to pay court fees at the rate of two point five percent of the claim value but not exceeding two hundred thousand baht and the principle on proceedings on an indigent basis was not applicable. The applicants appealed such order and objected that such provision was inconsistent with the principle of equality as provided by section 26 and section 30 of the Constitution. The applicants also motioned for their objection to be referred to the Constitutional Court for a ruling under section 264 of the Constitution. The Chiang Mai Administrative Court dismissed such motion. The applicant thereafter appealed the order to dismiss the motion and motioned for the Supreme Administrative Court to refer the applicants' objection to the Constitutional Court for further ruling.

The Supreme Administrative Court, after analysis, held that since the Administrative Court at First Instance applied section 45 paragraph four of the Act on Establishment of

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Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), to this case and the applicants objected that such provision was inconsistent with section 26 and section 30 of the Constitution, this was therefore a case where the applicants who were parties in the case objected to a provision of law to be applied to the case by the court as being subject to section 6 of the Constitution. Therefore, the Administrative Court of First Instance had to temporarily stay its proceedings of the case and refer the objection to the Constitutional Court for a ruling under section 264 of the Constitution. The applicants' motion was therefore granted and the proceedings in the Chiang Mai Administrative Court were temporarily stayed.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the power to accept this application for consideration under section 264 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The Constitutional Court held that according to the facts in the application, this was a case where the applicants objected that section 45 paragraph four of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was inconsistent with section 26 and section 30 of the Constitution and the Supreme Administrative Court had held that the Administrative Court of First Instance applied section 45 paragraph four of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), to the case and the Constitutional Court had not yet made a ruling in relation to such provision. When the Supreme Court referred the applicants' objection through official channels to the Constitutional Court for a ruling under section 264 of the Constitution, the Constitutional Court therefore had the power to accept the application for consideration.

3. The issue considered by the Constitutional Court

The issue which had to be considered by the Constitutional Court was whether or not section 45 paragraph four of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was contrary to or inconsistent with section 26 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).

The Constitutional Court held as follows. Section 26 of the Constitution was a provision which stated that powers of all State organs must be exercised with regard to human dignity, rights and liberties under the Constitution. Section 30 was a provision which protected the fundamental rights and liberties of the Thai people on the principle that all persons were equal under the law and received equal protection under the law; men and women had equal rights; and unjust discrimination against a person was prohibited. On the other hand, section 45 paragraph four of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was a provision prescribing court fees for plaintiffs in the Administrative Courts in the case of complaints for monetary awards or repossession of property in connection with a case under section 9 paragraph one

subparagraphs (3) or (4) at the rate of two point five percent of the value claimed but not exceeding two hundred thousand baht. Proceedings in the Administrative Court applied the inquisitorial system whereby the burden of proof was not all placed directly on the plaintiff. However, the court played an important role in conducting trials to facilitate plaintiffs in administrative trial proceedings in accordance with public law principles. Proceedings in the Administrative Court were therefore different from civil proceedings under the Civil and Commercial Code which allowed for proceedings on an indigent basis under section 149, in line with private law principles. The prescription of court fees by the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was a necessary measure and was beneficial to the State and the people generally. The lack of procedures relating to filing plaints on an indigent basis under the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was not considered as an unjust discrimination in any manner.

4. Ruling of the Constitutional Court

The Constitutional Court, by a majority of 10 Constitutional Court judges to 5 Constitutional Court judges, therefore held that section 45 paragraph four of the Act on Establishment of Administrative Courts and Administrative Court Procedures, B.E. 2542 (1999), was neither contrary to nor inconsistent with section 26 and section 30 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).
