

# **Summary of the Constitutional Court Ruling No. 27/2544**

**Dated 4<sup>th</sup> September B.E. 2544 (2001)\***

**Re : The Suphan Buri Provincial Court referred the objection of the defendant (Chaimongkol Refined Sugar Company Limited) requesting for a Constitutional Court ruling that the Regulations and Notifications of the Board of Sugar Cane and Granulated Sugar which were issued under the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were contrary to or inconsistent with the Constitution of the Kingdom of Thailand, B.E. 2540 (1997).**

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## **1. Background and summarized facts**

The Suphan Buri Provincial Court referred the objection of the defendant, who was the applicant, to the Constitutional Court for a ruling on whether or not the rules and administrative orders issued by the Board of Sugar Cane and Granulated Sugar under the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were rules and administrative orders issued ultra vires of the powers conferred by the said Act, and whether or not the Regulations, Notifications and Codes on the control of sugar production issued by the Board of Sugar Cane and Granulated Sugar by virtue of the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were contrary to or inconsistent with section 50 of the Constitution.

The facts under the application could be summarised as follows:

The Sugar Cane and Granulated Sugar Fund, the plaintiff, filed a claim against Chaimongkol Refined Sugar Company Limited, the defendant, at the Suphan Buri Provincial Court for violations of or non-compliance with the Notifications, Regulations and the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984). The defendant, who was the applicant, submitted an objection to the Suphan Buri Provincial Court requesting that the Court proceed under section 264 of the Constitution by submitting an opinion in the course of official business for a Constitutional Court ruling on whether or not the rules and administrative orders issued by the Board of Sugar Cane and Granulated Sugar by virtue of the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were rules or administrative orders issued ultra vires the said Act and whether or not the Regulations, Notifications and Codes on the control of sugar production issued by the Board of Sugar Cane and Granulated Sugar by virtue of the

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\* Published in the Government Gazette, Vol. 119, Part 38a, dated 26<sup>th</sup> April B.E. 2545 (2002).

Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were contrary to or inconsistent with section 50 of the Constitution.

## **2. Preliminary issue**

The Constitutional Court held that this was a case where the Suphan Buri Provincial Court referred a matter to the Constitutional Court for consideration under section 264 of the Constitution on whether or not the rules and administrative orders issued by the Board of Sugar Cane and Granulated Sugar by virtue of the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were rules and administrative orders which were ultra vires the powers conferred by the said Act, and whether or not the Regulations, Notifications and Codes on the control of sugar production issued by the Board of Sugar Cane and Granulated Sugar by virtue of the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were contrary to or inconsistent with section 50 of the Constitution. The Constitutional Court therefore accepted the application for consideration under clause 10 of the Rules of the Constitutional Court on Constitutional Court Procedure, B.E. 2541 (1998).

## **3. The issues considered by the Constitutional Court**

The issues which were considered under the application were as follows:

The first issue was whether or not the rules and administrative orders issued by the Board of Sugar Cane and Granulated Sugar by virtue of the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were rules and administrative orders which were issued ultra vires the powers conferred by the said Act.

The second issued considered was whether or not the Regulations, Notifications and Codes on the control of sugar production issued by the Board of Sugar Cane and Granulated Sugar by virtue of the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were contrary to or inconsistent with section 50 of the Constitution.

The Constitutional Court held that the definition of “law” should be classified into two categories, being:

In the first category were laws enacted by the legislature under the process provided by the Constitution, namely Acts, Organic Acts and other laws enacted by the executive under the process stated in the Constitution where the Constitution provided that such laws should have an equivalent status to laws or Acts enacted by the National Assembly, viz Emergency Decrees under section 218, section 220 and Royal Decrees enacted under section 230 paragraph five of the Constitution. Such laws were enacted by virtue of the Constitution and were therefore subordinate to the Constitution but must not be contrary to or inconsistent with the Constitution.

In the second category were Rules, Regulations and Royal Decrees other than those classified under the first category, which were issued by the executive or State organ by

virtue of the law, such as Ministerial Regulations, Notifications of Ministry, Local By-Laws, Rules, Codes, Orders or other provisions of general application. Owing that such Rules, Regulations and Royal Decrees were issued by virtue of provisions of law, they must be vires of the scope of powers in the primary laws. In other words, such Rules, Regulations and Royal Decrees should not be contrary to or inconsistent with the primary legislation and should also be neither contrary to nor inconsistent with the Constitution.

Section 6, section 29 paragraph three, section 57, section 64, section 198 paragraph one and section 200 (2) of the Constitution provided that “Laws,” “Rules” and “Regulations” meant both categories of laws aforementioned. At the same time, section 264 of the Constitution specifically provided for only “provisions of law.” It could therefore be inferred that the Constitution intended to restrict the scope of section 264 to only cases where “provisions of law” were disputed as being contrary to or inconsistent with the Constitution. Thus, the Constitutional Court had the power under section 264 of the Constitution to consider only “provisions of law,” i.e. the first category of laws. Section 264 of the Constitutional Court did not provide for the Constitutional Court to have the power to consider whether or not “Rules,” “Regulations” or “Royal Decrees,” being laws in the second category, were contrary to or inconsistent with the Constitution.

The Constitutional Court held that on the first issue which requested for a ruling that rules and administrative orders issued by the Board of Sugar Cane and Granulated Sugar were ultra vires the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) was an application for a ruling that rules and administrative orders were contrary to or inconsistent with a primary legislation. Rules and administrative orders were not provisions of laws under the meaning in section 264 paragraph one of the Constitution. Moreover, the case was an application for a ruling on consistency with primary legislation, not an application for a ruling that provisions of law were contrary to or inconsistent with the Constitution. The issue was thus outside the powers of the Constitutional Court to consider.

As for the second issue which requested for a ruling on whether or not Regulations, Notifications and Codes on the control of sugar production issued by the Board of Sugar Cane and Granulated Sugar by virtue of the Sugar Cane and Granulated Sugar Act, B.E. 2527 (1984) were Regulations, Notifications and Codes which were contrary to or inconsistent with section 50 of the Constitution, owing that such Regulations, Notifications and Codes were issued by the Board of Sugar Cane and Granulated Sugar, which was not an organ exercising legislative powers, such provisions were therefore not provisions of law which the Constitutional Court could consider under section 264 of the Constitution. This opinion was in accordance with Ruling No. 4/2542.

#### **4. Ruling of the Constitutional Court**

The Constitutional Court ordered that the application be dismissed.

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