



Administrative Court Decisions

Environmental Protection *

(The Supreme Administrative Court No. A 341/2549)

(Mr. Sunthorn Sangthongsamansin with joint plaintiffs (26 plaintiffs)

v.

*Minister of Agriculture and Co-operatives (1st defendant), Department of Fisheries
(2nd defendant) and the Pattani Governor (3rd defendant)*

The Ministerial Notification was issued to prohibit the use of push net with the engine-driven boat fishing in some areas for the purpose of regulating a fishery profession and conserving natural resources and environment. Even though it curtails the plaintiffs' freedom of occupation, the damage to the plaintiffs is lesser when weighed against loss to the public interest. The Ministerial Notification is lawful because it becomes the measure necessary and achievable to conserve natural resources for a sustainable use.

Legal Principles : *Rights and Liberties in Occupation, Restriction of Rights and Liberties of a Person, Competition between Individual Rights and Public Interest (Environmental Protection)*

* Translated by Mr. Suchat Wongsinnak, Administrative Case Official, Professional Level, Bureau of the President of the Supreme Administrative Court of Thailand. Source : The Office of the Administrative Courts. The Administrative Courts and the Administrative Environmental Cases. Bangkok: P. Press, B.E. 2553 (in Thai), pp. 19-21.

Administrative Court Procedure : Inquiry of Facts

Legal Provision : *The Constitution of the Kingdom of Thailand, B.E. 2550 (2007)*

(Sections 29 and 50)

Act on Establishment of Administrative Court and Administrative Court Procedure, B.E. 2542 (1999) (Section 55 paragraph 3)

The Minister of Agriculture and Co-operatives (the 1st defendant) issued the disputed Ministerial Notification dated 17 July B.E. 2546 (2003) subjected “Prohibit the use of push net with the engine-driven boat fishing in some areas for the purpose of regulating a fishery profession and conserving natural resources and environment.” In fact, this Notification adds only an annexed map to the previous Ministerial Notification dated 26 February B.E. 2541 (1998) subjected “Prohibit the use of push net with the engine-driven boat fishing in the areas of the Pattani province” by designating the specific areas in which push-net fishery with the engine-driven boat is not allowed.

The plaintiffs claimed that the Ministerial Notification dated 17 July B.E. 2546 (2003) damaged those who has been granted the fishing licenses for the push net fishery within the Pattani province. It prevented them from fishing by using the push net completely. In this respect, the plaintiffs alleged that the disputed Ministerial Notification breaches Section 29 and Section 50 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997)^๑. They, therefore, sought an order from the Court to revoke the Ministerial Notification dated 17 July B.E. 2546 (2003).

^๑ **Section 29**

The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this Constitution and only to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties.

The law under paragraph one shall be of general application and shall not be intended to apply to any particular case or person; provided that the provision of the Constitution authorising its enactment shall also be mentioned therein. (มีต่อหน้าถัดไป)

The Supreme Administrative Court referred to the research study conducted by the Director General of the Department of Fisheries (the 2nd defendant). The study found that the push net increases capacity to catch more aquatic animals dwelling in soil surface in which schools of young economic aquatic animals also reside. If these young aquatic animals are allowed to survive and grow up, their economic value would be more gained. In addition, the skis attached to the push net turbid seawater. The turbidity of seawater affects local-coastal fishery. From these reasons, the 2nd defendant recommended the 1st defendant to issue the Ministerial Notification dated 17 July B.E. 2546 (2003) by only annexing a map to the previous Ministerial Notification dated 26 February B.E. 2541 (1998), designating clearly the areas in which the push net fishery with the engine-driven boat is not allowed.

The Supreme Administrative Court held that the disputed Ministerial Notification dated 17 July B.E. 2546 (2003), although curtailing the plaintiffs' freedom of fishery occupation, is the measure more effective to attain the goal of conserving species of aquatic animals and protecting the local costal fishery profession than that provided in the previous Ministerial Notification dated 26 February B.E. 2541 (1998). Weighing in the damage to the plaintiffs against loss to the public interest, the Supreme Administrative

(ต่อจากเชิงอรรถที่ ๑)

The provisions of paragraph one and paragraph two shall apply *mutatis mutandis* to rules or regulations issued by virtue of the provisions of the law.

Section 50

A person shall enjoy the liberties to engage in an enterprise or an occupation and to undertake a fair and free competition.

The restriction on such liberties under paragraph one shall not be imposed except by virtue of the law specifically enacted for maintaining the security and safety of the State or economy of the country, protecting the public in regard to public utilities, maintaining public order and good morals, regulating the engagement in an occupation, consumer protection, town and country planning, preserving natural resources or the environment, public welfare, preventing monopoly, or eliminating unfair competition.

Court was of the opinion that the former is lesser. Moreover, there have not been other measures available to conserve natural resources and environment and to protect the local fishery profession as effective as the present one assigned in the disputed Ministerial Notification dated 17 July B.E. 2546 (2003). It then becomes the measure necessary to be proceeded to attain the goal in conserving natural resources for a sustainable use. Nevertheless, the plaintiffs still have been able to keep their boats fishing outside the designated areas or they can adjust their fishing instruments in the ways not contrary to the disputed Ministerial Notification. In this respect, the disputed Ministerial Notification does not prohibit the plaintiffs from fishing absolutely and permanently. Consequently, it cannot be considered that the plaintiffs' freedom of fishery occupation is substantively affected. In addition, the licenses for the push net fishery granted to the plaintiffs do not yield them the special rights for fishing without taking into account the conservation of natural resources and environment which is the issue of the public interest. The disputed Ministerial Notification dated 17 July B.E. 2546 (2003), enacted according to Article 32(2) and (4) of the Fishery Act B.E. 2490 (1947) by the 1st defendant is, therefore, the lawful exercise of power and it is the appropriate use of the discretion.