

คำแปลคำพิพากษาศาลปกครองไทย

Supreme Administrative Court Order No. 592/2552*

Anti-Global Warming Association Plaintiff No. 1, et al., total of 36 persons

Between

National Environment Board Defendant No. 1, et al., total of 8 persons

Re : Environment

National Environment Board (Defendant No.1), et al, total of 8 persons, have given joint approval and permission projects or activities operating in Map Ta Phut and surrounding areas which may cause severe effect on the community both in natural resources environmental quality and the health, in total 76 projects, to which the projects and the activities have not been operated in according to the rules prescribed in Section 67 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550. The defendants, therefore, filed a motion to the court to revoke the Environmental Impact Assessment (EIA) and the License, and to instruct the defendant, et al., total of 8 persons, to issue regulation, rule or carry out other steps as provided in the law within 30 days of the date of judgment. In this case, the plaintiff, et al., has filed a petition attached to the plaint to plead the court to prescribe any measure or protection to provide temporary injunction prior to judgment by ordering suspension of 76 industrial projects and activities pending in area of Map Ta Phut Subdistrict, in Ban Chang

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District, and surrounding areas, Rayong Province, for the time prior to the court judgment.

The Central Administrative Court has made an order to prescribe measure or method of temporary injunction prior to judgment by ordering the defendant, et al., total of 8 persons, to temporarily suspend all 76 projects and activities, as shown in Document No. 7 attached to the Plaint Form, until the judgment or the order of the court shall instruct otherwise, less the projects or activities permitted before the effective date of the Constitution of the Kingdom of Thailand B.E. 2550 and projects or activities that are not required to prepare the environmental impact assessment report under the Notification of the Ministry of Natural Resources and Environment, re: Announcement of category and size of projects or activities which have to provide report of environmental impact assessment and criteria, procedure, regulations and guidelines of report of environmental impact assessment, dated 16 June B.E. 2552. However this does not include the process for being in accordance with Section 67 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550.

The Supreme Administrative Court hold that the right of an individual provided under Section 67 of the Constitution of the Kingdom of Thailand B.E. 2550 guarantees that it shall be protected. The lack of the provision of law prescribing criteria, condition and method of exercise of such right cannot be a reason for a state agency to rely on to reject such protection of right. In this regard, the Constitutional Court made a decision No. 3/2552 since 18 March 2552 concerning the Enhancement and Conservation of National Environmental Quality Act B.E. 2535 that the aim of the Constitution of the Kingdom of Thailand B.E. 2550 is to guarantee that the right and liberty provided in the Constitution to be enforced immediately after the effective date of the Constitution without the existence of any implementing legislation. Therefore, prior to carry out project or activity which may cause severe impact to environmental quality, natural

resources and health, all the criteria specified in Section 67 paragraph two of the Constitution has to be completed. Given that eight defendants in total approved the whole 76 projects and activities without the completion of the criteria prescribed in Section 67 paragraph two of the Constitution, the act of the eight defendants is therefore unlawful. The lawsuit filed by the forty-three plaintiffs has a standing. It is appropriate to allow the eight defendants to review and study on the projects prior to give their approval for the 76 projects under Section 67 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550, the court thereby has sufficient grounds to order for temporary measure or protection as an injunction prior to judgment as petitioned by the forty-three plaintiffs.

Relating the issue of responsibility of the administrative agency or state official and the issue of whether it could cause obstacle to state administration, the Supreme Administrative Court had the opinion that, after Section 67 of the Constitution of the Kingdom of Thailand came into force, state agency which has its power and duty to approve or permit according to the relevant law has raised the issue of compliance with Section 67 with the Office of the Council of State which had its opinion that the provision has not yet come into effect immediately because there is a transitory provision according to Section 303(1) specifying that the effectiveness of the provision to be under the precondition that it is required to have a law to prescribe the details. The responsibility agency may issue a license to the project or activity being granted an approval to the report of environmental impact assessment under the Enhancement and Conservation of National Environmental Quality Act B.E. 2535. The legal opinion given by the Office of the Council of State contradicted the decision of the Constitutional Court that project or activity which may have severe impact on community has to immediately comply with Section 67 of the Constitution of the Kingdom of Thailand B.E. 2550. In addition, Section 216 paragraph five of the Constitution provides that the decision of the Constitution Court shall be final and binding upon the parliament,

cabinet, court and other state agency. The legal opinion of the Office of the Council of State thereby has to follow the decision of the Constitutional Court as well. After this case has been filed, the Industry Minister (Defendant No.4) has then issued a notification of the Ministry of Industry prescribed category of project or activity which may cause severe effect to community and has not proceeded to bring the Bill of Independent Agency related to Environment and Health B.E. ... into effect although the public hearing on the Bill has been held. This means that the related defendant did not seriously follow up and put the law into effect, it is therefore the direct responsibility of the defendants for having failed to follow the spirit of the Constitution.

On the issue whether the Central Administrative Court has made an order prescribing temporary injunctive measure or protection prior to judgment may cause obstacle to state administration, the Supreme Administrative Court held that, if there is an obstacle to state administration resulting from the order prescribing temporary injunctive measure or protection of the court, it is a direct consequence of the non-feasance or delay in performance of the defendant functions required by the Constitution. Therefore, slowing down the construction, wasting time and spent in the project implementation of the owner of the project or the activity, which affect business and economic growth of the private sector, including affecting state economic administration, are not direct consequence of the order made by the temporary injunctive order of the court. However, good practices in continuous environmental management to enhance the quality of life for all citizens is regarded as an equitable right to be applied not only to the citizens who are presently living in this area but also to citizens who are going to settle down in this area in the future. Additionally, civilized countries regard such environmental management as an important responsibility to be performed by the State. As a result, damage to the owner of the project or activity may occur only for a limited period of time as result of the failure in following the provision of law and it is not a total restriction to carry out the business. Only those projects or activities which is

categorized as having severe affect on the community is needed to follow provision of Section 67 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550 as a precondition. In addition, these projects and activities shall have to bear responsibility for environmental impact and have to pay attention to health and life quality of the citizens who have to take a risk of pollution resulting from the implemented production.

However, in considering the petition of the forty-three plaintiffs, it is clear to the Supreme Administrative Court that the lawsuit has a standing and it does have enough causes to apply the protective measure as petitioned by the plaintiffs and granted by Administrative Court of First Instance through its order for temporary injunctive measure or protection prior to judgment. Upon initial considering on type of project or activity, the Supreme Administrative Court had the opinion that certain projects or activities might not obviously cause severe effect, but they only aimed at controlling or eradicating pollution or installing additional equipments, the order prescribing temporary injunctive measure or protection prior to judgment is therefore unsuitable, i.e., industrial projects or activities Nos 16, 22, 37, 41, 45, 50 and 54; and transportation projects Nos 2, 3, 4 and 6. For the rest of the projects or activities, upon considering the announcement made by the defendant No.4 re: projects or activities related to environment which may cause severe impact on the community both in natural resources environmental quality and health, dated 14 September B.E. 2552, specifies about 8 high impact projects or activities, and the draft of project or activity which may cause severe impact on the community both in quality of environmental natural resources and health, altogether 19 categories upon which public hearing were conducted and were specified by the state officials to be project or activity which may cause severe impact on community, the Supreme Administrative Court held that the rest of the projects or activities which comprise petroleum and pipeline project, steel project, industrial estate and industrial plantation, harbor, power plant, industrial hazardous waste treatment, are categories of projects or activities specified in the Announcement.

It is likely that they are projects or activities which may cause severe impact on the community both in environmental quality, natural resources and health and if such projects or activities have been completed the measures required by the provision of Section 67 paragraph two of the Constitution of the Kingdom of Thailand B.E. 2550, the plaintiffs or the stakeholders may file a petition to the court where the case is pending for an order amending or revoking the provisional measure.

The Supreme Administrative Court therefore ordered the amending of the order of the Administrative Court of First Instance resulting that the eight defendants in total had to temporarily suspend projects or activities under the Document No. 7 attached to the Plaint Form until the court would instruct otherwise. The above did not cover the industrial projects or activities Nos 16, 22, 37, 41, 45, 50 and 54 and the transportation projects or activities Nos 2, 3, 4 and 6 are able to resume, unless they shall be corrected to be in accordance with the order of the Administrative Court of First Instance.

(Order of the Supreme Administrative Court No. 592/2552)
