

Liability without fault of Administrative Agency in Water Management Practice *

Supreme Administrative Court Judgment No. A. 263/2562

dated 30th April B.E. 2562 (2019)

R Company (P)

v.

The Royal Irrigation Department (D)

The accelerated drainage and water diversion practices for the propose of damage control by the Royal Irrigation Department are the water management practices within the scope and in accordance with the purpose of the Royal Irrigation Act B.E. 2485 which is the prevention of disaster whereas the public interests must be considered. The water management is proceeding in accordance with the powers and duties stipulated by law. Where there is no unlawful act, there can be no conviction for torts from injuring the individual. However, if the said act caused damage to the rights of any person, the administrative agency is liable to compensate for damage. The purpose is to protect the rights of individuals who are especially burdened by the government's other liability actions. However, the compensation, in this case, is not compensation of torts which the purpose of compensatory damages in tort law is to place a plaintiff as far as possible in the position in which they would have been or had the wrong not occurred. In this case, it is compensation for damages that are more than usual caused by the actions of administrative agencies. When the damage partly caused by heavy rainfall that is a natural disaster and another part was caused by accelerated drainage from the dam, therefore, the causes of flooding in the injured persons' property were a result of both nature and administrative agency factors. The administrative agency must compensate only for damages that caused by water management without claiming that the damages were caused by natural disaster and exercised its authority in a manner that is consistent with the law so, it shall not be liable for any damage.

Legal Principles: *Liability without fault of the administrative agency*

Legal Provision: *The Royal Irrigation Act B.E. 2485: Sections 6 and 7*

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Judgment (Summary)

The Plaintiff claimed that it is a legal person which is a limited company operates the business as a manufacturer and distributor of milled rice in Ang Thong province and the Defendant (Irrigation Department) is an administrative agency under Ministry of Agriculture and Cooperatives, is responsible for the administration of water resource development by allocating to all types of water users so that every water user is able to receive water thoroughly and fairly as well as preventing damages caused by water. By the beginning of October B.E. 2549, the water in the Noi River in front of the Mill of the Plaintiff began to increase. The Plaintiff, therefore, prepared to prevent damages by constructed a water barrier with sandbags throughout the riverbank and prepare to pump machinery to monitor the infiltration of water into the mill. After that, the amount of water in the Noi River has increased rapidly and caused flooding into the mill. The Plaintiff claimed that the damages were caused by Boroma Thad Water Treatment and Maintenance Project which is the responsibility of the Defendant. From the facts that the Defendant has drained water into the Noi River without informing the Plaintiff in advance, the Plaintiff has filed a complaint requested for compensation.

However, the Defendant has a letter explaining that the flooding in the rice mill's area was caused by the overflowing of the Northern water that flows through the Chao Phraya River, was overloaded capacity of the river. Thus, the Defendant was not responsible for the compensation which, in this case, there are Provincial authorities and the Ministry of Agriculture and Cooperatives are responsible for the compensation. Therefore, the Plaintiff should submit a letter to the Ministry of Agriculture and Cooperatives via the local province authority to request for further assistance. However, the Plaintiff claimed that the flooding in the mill area was caused by the ineffective management of the Defendant. The Plaintiff then filed the case to the Administrative Court to adjudicate or order the Defendant to compensate for damages.

The Supreme Administrative Court ruled that the water management of the Defendant is a duty in accordance with Section 4 of the Royal Irrigation Act B.E. 2485, Article 1 of the Ministerial Regulations B.E. 2545. From the facts that during the period from September to October B.E. 2549, the Northern and Central areas of Thailand were flooded due to continuous heavy rainfall in the lower northern region, the Yom Basin, Nan Basin, and the Central area, led to flooding in various provinces. Moreover, the water in the Bhumibol and Sirikit dams were overflowing, it was necessary to drain some water into the Chao Phraya River Basin, and consequently the volume of water in the area along Chao Phraya River, Suphanburi River and Noi River increased and overloaded the carrying capacity of the river. After that the water overflowed across the Highway 311, Sing Buri - Chai Nat between Km 15 + 940 to Km 60 + 300, totaling 10 kilometers by flowed through Boroma Thad Canal, flooded agricultural and residential areas, including the Plaintiff's rice mill area. The damages were partly caused by heavy rainfall due to the influence of the Typhoon Xangsane which is

a natural disaster and partly caused by accelerated drainage from the dam by the administrative agency in order to prevent damage to the stability of the dam. Furthermore, the diversion of water to various branches of rivers and canals must be done to be able to control the amount of water flowing into agricultural or residential areas including areas that are economically important before serious damage may occur. The practices of the Defendant were the damage control measures according to the water management plan. Thus, the acceleration of the drainage and water diversion was water management within the scope or framework of the purpose of preventing public disasters which requires consideration of the public interest. On the grounds that the Defendant exercised its power under Section 6 and Section 7 of the Royal Irrigation Act B.E. 2485, the actions of the Defendant were not appeared to be unlawful, but in accordance with the powers and duties as provided by law to protect and maintain public safety or for the public interest, which is not considered a violation against the law. However, if the said acts caused damage to the rights of the Plaintiff, the administrative agency must compensate the Plaintiff for damages as a result of the violation of Plaintiff's rights. The purpose of compensatory damages, in this case, is to protect individual rights of the Plaintiff, who has to bear special damages from the proceedings of administrative agencies that have acted under the law to maintaining public safety and security in accordance with the objectives or purposes of the provisions of the law mentioned above.

However, the compensation, in this case, is not compensation of torts which the purpose of compensatory damages in tort law is to place a Plaintiff as far as possible in the position in which they would have been or had the wrong not occurred. In this case, it is compensation for damages that is more than usual caused by the water management of the administrative agency. Thus, when the Plaintiff had to bear extra damages beyond the normal stage due to the water management actions of the Defendant's officers, it is therefore appropriate that the government by the Defendant must compensate the damage to the Plaintiff for the interest of justice. The Defendant could not claim that the damages were caused by natural disaster and it has exercised its authority in a manner that is consistent with the law so, it shall not be liable for any damage.

As for the issue about the amount of the compensation attributable to the acts of the Defendant, the Court founded that the causes of flooding in the Plaintiff's rice mill was partly due to the influence of the Typhoon Xangsane which is a natural disaster and another part was due to the acceleration of drainage from the dam by the Defendant in order to prevent damage to stability of the dam. Although, there was no clear evidence that which one was the cause of flooding in the Plaintiff's rice mill area caused damages but according to the facts that there was continuous heavy rainfall in the area for a long time, the causes of flooding in the Plaintiff's property were a result of both nature and administrative agency factors no less. The Court considered that the Defendant should compensate only for the damages caused by water management of the Defendant's officers

and it is necessary to deduct half of the damage caused by natural disasters. Therefore, the Defendant must compensate for half of the damage to the Plaintiff.
