

Conflict of Interest in the Security Guard Employment Contract^{*}

Supreme Administrative Court Judgment No. A. 349/2562, dated 21st May B.E. 2562 (2019)

Mr. V. (P)

v.

Phanom Phrai District Chief (D1)

Department of Provincial Administrative (D2)

In the case where the Plaintiff who held the position of the Chief Executive of the Subdistrict Administrative Organization approved to employ his son to be a security guard of such Subdistrict Administrative Organization by using the state budget, it could be seen that the Plaintiff's son would take some amount of his monthly wages to maintain his parent as the duties required by the law pursuant to Section 1563 of the Civil and Commercial Code. Although the employment procurement was lawful, such the Plaintiff's approval was carried out for personal interest rather than public interest. Thus, it was considered that the Plaintiff had an indirect interest in a contract with such Subdistrict Administrative Organization which was prohibited by Section 64/2 paragraph one (3) of Subdistrict Council and Subdistrict Administrative Organization Act, B.E. 2537 (1994) and the amendment. As well, Defendant No.1 was empowered to inquire and render a decision to vacate the Plaintiff from his position pursuant to Section 64/2 of the said Act. The decision of Defendant No.1 vacating the Plaintiff from his previous position was deemed a reasonable and lawful discretion.

Legal Principles: *Wrongful Act, Conflict of Interest, Exercise of Discretion*

Administrative Court Procedure: *Act on Establishment of Administrative Courts and Administrative Court Procedure, B. E. 2542 (1999) : Section 9 paragraph one (1) and (3)*

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Legal Provisions : *Subdistrict Council and Subdistrict Administrative Organization Act, B.E. 2537 (1994) : Section 64/2 paragraph one (3), Section 64 paragraph one (7) Civil and Commercial Code, Section 1563*

Judgment (Summary)

The Plaintiff complained that on July 24th, 2015, Defendant No.1 rendered the decision in writing ordering to vacate the Plaintiff from the position as the Chief Executive of the Subdistrict Administrative Organization (SAO) on the ground that the Plaintiff employed his son to be the security guard of such Subdistrict Administrative Organization. It was deemed that the Plaintiff had a direct or indirect interest in a contract with the Subdistrict Administrative Organization. The Plaintiff held the opinion that the mentioned decision was unlawful since such security guard employment contract was made due to the unrest situation in the country and the District Office for Local Administration notified the Local Administrative Organization to arrange the security guards being on duty for 24 hours. Furthermore, the Plaintiff approved to employ his own son to be a security guard as the result of the selection committee's consideration. Subsequently, the Plaintiff filed a case with Administrative Court requesting the Court to revoke Defendant No.1's order that vacated the Plaintiff from his previous position.

The Supreme Administrative Court held that according to Section 64/2 paragraph one (3) of Subdistrict Council and Subdistrict Administrative Organization Act, B.E. 2537 (1994) amended by Subdistrict Council and Subdistrict Administrative Organization Act (No.5), B.E. 2546 (2003), it has the purpose for the Chief Executive of the Subdistrict Administrative Organization and other State official required by the law to perform his or her duties with impartiality and without conflict of interest or conflict between personal interest and public interest. Moreover, those people are prohibited to seek their own benefits from their positions, which may result in those people not being trusted to perform their duties morally and ethically and also causes public service not complying with Good Governance principle. In the case where those people violate Section 64/2 of the said Act, the District Chief shall inquire and make a decision to vacate such person from his or her position. Given the fact that during holding the position of the Chief Executive of the Subdistrict Administrative Organization, the Plaintiff had made a contract to employ his son who lived in the same house to be a security guard of such Subdistrict Administrative Organization with a monthly wage of 6,000 bath for six months. The Plaintiff also claimed that while the National Council for Peace and Order (NCPO) was taking control of the country, the District Office for Local Administration notified in writing that the Local Administrative Organization had to arrange the security guards being on duty for 24 hours. The Plaintiff therefore consulted with the heads of government agency attached thereto which resulted in recruiting further security guard. Consequently, the procurement

officer and committee carried out the recruitment process by bidding method with three applicants applying thereto. After the consideration of the committee, the Plaintiff's son was the lowest bidder in the applications; the Plaintiff thus approved to employ his son to be a security guard accordingly. Nevertheless, when considering the notification of the District Office for Local Administration, it had the intention that the Subdistrict Administrative Organization to secure the government office for 24 hours in the unrest situation and the security guards could be the civil servants or any current officers. Such notification did not have the policies to recruit any person to be a security guard. Hence, the Plaintiff could not raise the excuse that the employment further security guard was in response to the policies thereof. In addition, in the case where the Plaintiff approved to employ his own son to be a security guard by using the state budget of 6000 baht per month, it could be seen that the Plaintiff's son would take some amount of his monthly wages to maintain his parent as the duties required by the law pursuant to Section 1563 of the Civil and Commercial Code. Although the employment procurement was lawful, such the Plaintiff's approval was carried out for personal interest rather than public interest. Therefore, it was considered that the Plaintiff had an indirect interest in a contract with the Subdistrict Administrative Organization in accordance with Section 64/2 paragraph one (3) of the said Act. As well, Defendant No.1 was empowered to inquire and render a decision to vacate the Plaintiff from his position pursuant to Section 64/2 of the same Act. The decision of Defendant No.1 vacating the Plaintiff from his previous position was deemed a reasonable and lawful discretion.