

The Issuance of the Administrative Order without Authority is the Issue of Law
Concerning Public Order*

Supreme Administrative Court Judgment No. A. 301/2562

dated 29th April B.E. 2562 (2019)

Acting Sub Lt. S (P)

v.

Deputy Chief Executive of the Bansai Subdistrict Administrative Organization (D)

In the case that an official of a government agency caused damage to another government agency, the Head of the department that has suffered damage and the Head of the department that the official who committed a tort is affiliated with, have the power to jointly consider the appointment of the Committee for Investigation of tort liability and joint decision-making procedure to make a decision on the matter and offer opinions, whether they agree or not, to the Ministry of Finance under Clause 10 of the Regulation of the Office of the Prime Minister on Rules and Practices Regarding Tortious Liability of Officials, B.E. 2539 (1996). When the Subdistrict Administration Organization, which suffered damages, has solely made an order appointing the Committee to investigate the tort liability, signed and submitted report to the Ministry of Finance and also issued the administrative order to the officer who committed the tortious act to pay compensation without letting the Head of the department of the official who committed a tort cosigns the order. Thus, it is considered as the case where an administrative order issued without authority. This case involved an issue of law concerning public order, which the Supreme Administrative Court may invoke such issue and deliver a judgment or an order accordingly. The administrative order, in this case is unlawful.

Legal Principles: *Public Administration*

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

* Summarized by Asharapa Yoshioka, Bachelor of Laws (LL.B.), Thammasat University, Master of Laws (LL.M.), University of East Anglia, United Kingdom, Administrative Case Official Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E.2543 (2000): Clause 92

Legal Provision: *Act on Liability for Wrongful Acts of Officials B.E. 2539 (1996)*

Regulation of the Office of the Prime Minister on Rules and Practices Regarding Tortious Liability of Officials, B.E. 2539 (1996): Clauses 10 and 20

Judgment (Summary)

The Plaintiff claimed that he held the position of Deputy District Chief as Chief of Administration Section and is aggrieved or injured in consequence of an act by the Defendant (Deputy Chief Executive of the Bansai Subdistrict Administrative Organization) that issued the administrative order to the Plaintiff to pay compensation in the amount of 126,656.50 baht due to Office of the Auditor General of Thailand Region 4 has investigated and found that the Subdistrict Administration Organization (SAO) illegally forged the annual budget regulations of the year 2004 and misused the budget. During that time the Plaintiff was in the position of Deputy District Chief at the district defense office and was also appointed as acting Deputy Chief Administrator. The Plaintiff claimed that the Defendant's administrative order was not lawful and the Plaintiff has not committed a tort but his signatures were forged in disbursements of the SAO. Besides, even the Plaintiff performed his duties mainly in the district but he must be responsible as the district coordinator that has to be out of the Office to perform duties with other district-level governments every week, therefore, he was not able to perform his duty at the SAO office every day. The Plaintiff then appealed the administrative order to the provincial governor but has been dismissed. The Plaintiff then requested the Administrative Court to have a judgment that he does not have to pay the compensation.

The Supreme Administrative Court ruled that a case in which an official of a government agency caused damage to another government agency, the Head of the department that has suffered damage and the Head of the department of the official who committed a tort, have the power to jointly consider the appointment of the Committee for investigation of tort liability, make a decision, offer opinions on the matter and consider the amount of the compensation. Therefore, the Head of the department that has suffered damage and the Head of the department of the official who committed a tort, jointly consider and sign the Infringement Liability Investigation Committee appointment order, with the relevant government agencies agreeing to one of the government agencies to issue an order appointing the Committee and the Heads of the said relevant agencies shall co-sign the order, then together make a decision and offer opinions, whether they agree or not,

to the Ministry of Finance under Clause 20 of the Regulation of the Office of the Prime Minister on Rules and Practices Regarding Tortious Liability of Officials, B.E. 2539 (1996).

From the facts of the case, during the time that the Plaintiff was in the position of Governing Officer 5 at the Defense Office under Department of Provincial Administration, according to the resolution taken at the meeting of District Officer Committee on 29th August 2002, the SAO issued an order dated 2nd October 2002 appointed the Plaintiff for Acting Deputy Chief Administrator by starting to perform his role since 3rd October. After that, State Audit Office of the Kingdom of Thailand, by the Regional Audit Office No.4, issued a letter dated 13th July 2007 that the SAO forging the rules of the annual government statement of expenditure and misusing the expenditure for the year 2004 causing damages to the government. The State Audit Office also requested the SAO to take legal action with relevant parties. After that, the Defendant issued an order dated 22nd November 2007, to appoint the Committee to investigate tort liability. The Committee has come to their conclusion that the Plaintiff, a Governing Officer 5 at the Defense Office under the Department of Provincial Administration and also appointed as acting Deputy Chief Administrator at the SAO, has caused damage to the SAO while performing his duties, which considered as the case that an officer of a government agency causes damage to another government agency. According to Clause 10 of the Regulation of the Office of the Prime Minister on Rules and Practices Regarding Tortious Liability of Officials, B.E. 2539 (1996), the Head of the department that has suffered damage and the Head of the department that the official who committed a tort shall jointly consider the appointment of the Committee for Investigation of tort liability and joint decision-making procedure to make a decision on the matter and offer opinions, to the Ministry of Finance according to Clause 20 of the said Regulation.

According to the facts of the case, the administrative order of the SAO regarding the appointment of the Committee for Investigation of tort liability under the Act on Liability for Wrongful Acts of Officials B.E. 2539 (1996), is solely signed by the Defendant which is not in accordance with Clause 10 of the Regulation of the Office of the Prime Minister on Rules and Practices Regarding Tortious Liability of Officials. Moreover, it appears that after the Committee has reported and submitted the opinion regarding the person liable and the amount of the compensation, the Defendant has made a decision and submitted the report to the Ministry of Finance, which is not in accordance with Clause 20 of the same Regulation. Also, after the Ministry of Finance issued a letter dated 4th February 2009 informing the Plaintiff about the decision of Administrative Officials tort liability investigation, the Defendant issued the administrative order dated 13th March 2009 to the Plaintiff to pay compensation in the amount of 126,565.50 baht without letting the Head of the department of the official who committed a tort cosigns the order, which is not pursuant to Clause 18 paragraph one of the Regulation of the Office of the Prime Minister on Rules and Practices Regarding Tortious Liability of Officials, B.E.2539 (1996). Therefore, the

order dated 13th March 2009, only for the part that ordered the Plaintiff to be liable to pay compensation in the amount of 126,565.50 baht, was an order without authority. The administrative order is unlawful under Section 9 paragraph one (1) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E.2542 (1999). In the case that the issue concerning the authority, it is the case where the point of law involving public order, the Supreme Administrative Court may raise the issue for decision and give judgment accordingly, according to Clause 92 of the Rule of the General Assembly of Judges of the Supreme Administrative Court on Administrative Court Procedure B.E.2543 (2000). Moreover, the order dated 13th March 2009 only for the part that ordered the Plaintiff to be liable to pay compensation in the amount of 126,565.50 baht was unlawful. Therefore, the decision to dismiss the appeal of the Defendant is unlawful as well.
