

## State Agency Shall Provide Public Service with Care for Environment and the Quality of Life of People \*

Supreme Administrative Court Judgment No. A. 11 – 14/2557, dated 6<sup>th</sup> February B.E. 2557 (2014)

*Foundation for Anti Air Pollution and Environmental Protection (P1) et al. v. Bangkok Mass Transit Authority (D1) and Pollution Control Department (D2)*

As the State agency which has a duty to provide the public transportation, the Defendant No.1 has to provide public buses and other buses operated under the responsibility of the Defendant No.1 sufficient for people's convenience and maintain these buses in good condition by not contributing pollution to the environment and public health according to the provision of Constitution and concerning laws. As a result, the failure to control vehicle emissions from these buses is the negligence of duties of the Defendant No.1. Meanwhile, the Defendant No.2 has no responsibility for the inspection of vehicle emissions from the public buses and other buses operated under the Defendant No.1; however, the vehicle emissions are still the other point source of pollution under the control of the Defendant No.2. The failure to inspect vehicle emissions is also the negligence of duties of Defendant No.2.

Legal Principles : *The Negligence of Duties, Pollution and Environmental Protection*

Administrative Court Procedure : *Act on Establishment of Administrative Courts and Administrative Court Procedure B.E. 2542 : Section 9 paragraph one (2)*

Legal Provisions : *Constitution of the Kingdom of Thailand B.E. 2550 (2007)*

*Enhancement and Conservation of the National Environmental Quality Act,*

*B.E. 2535 (1992) : Section 4, Section 53 (6), and Sections 64 – 68*

*Land Traffic Act, B.E. 2522 (1979) : Section 6 paragraph one*

*Motor Vehicle Act, B.E. 2522 (1979) : Section 4 paragraphs two and three*

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### Judgment (Summary)

The Plaintiff No. 1, the public benefit organization registered as an association to Bangkok Registrar for Foundation, filed a case to the Administrative Court claiming that the Plaintiffs were aggrieved or injured from the negligence of duties of the Defendant No.1. The Plaintiffs alleged that the Defendant No.1 did not operate, control, inspect, and organize the busing system for the public buses and the concessionaires of buses operated under the Defendant No.1 according to Royal Decree Establishing Bangkok Mass Transit Authority B.E. 2519 (1976) which has an intention that the public buses shall not cause pollution and vehicle emissions, as prescribed by the National Environment Board. The air pollution from the vehicle emissions is the cause of respiratory system disease and has an impact on the environment and public health. In the meanwhile, the Defendant No.2 did not inspect the emissions standard of air quality for the public health under the law. The Plaintiff then requested the Court to have a judgment or order to the Defendant No.1 to strictly perform the duties under the law in order to solve and prevent the air pollution problem, and to control vehicle emissions from the public buses and other buses operated under the Defendant No.1, and to the Defendant No.2 to impose measures to solve the air pollution problem within 60 days or within the days as prescribed by the Court and to present the notification of progress to the Plaintiffs and the public.

The Supreme Administrative Court held that the Defendant No.1 is a State enterprise founded by the Establishment of Government Organization, B.E. 2496 (1953) and has the duties under the Royal Decree Establishing Bangkok Mass Transit Authority B.E. 2519 (1976). The Defendant No.1 therefore is the State agency as prescribed by law to have powers and duties in the public transportation under its own operation or joint operation with the private, and it is deemed as the public service. In order to accomplish the objective of the public service, the Defendant No.1 shall provide public buses sufficient for people's convenience; in addition, the Defendant No.1 shall maintain the public buses and other buses operated under the Defendant No.1 as the vital tools for the public service in good conditions. The Defendant No.1 shall perform the duties according to the provisions of Constitution, stating that every State agency shall exercise powers with respect to human dignity, rights and liberties

of people, especially the protection of environment for health and quality of life of people. Moreover, Section 6 paragraph one of Land Traffic Act, B.E. 2522 (1979) prohibits any person from manipulating vehicles in unsecured or hazardous conditions or in a harmful way to people and passengers' health. The Defendant No.1 then has the duties to maintain the public buses and other buses in good conditions and not contributing air pollution. The failure to control vehicle emissions under the standard is the negligence of duties of the Defendant No.1 against the provisions of Constitution and the concerning law. The Supreme Administrative Court agreed with the Administrative Court of First Instance's judgment which ordered the Defendant No.1 to control vehicle emissions in all the public buses and other buses operated under the Defendant No.1 and to submit a report of vehicle emissions inspection to the Court every 3 month for the period of 1 year since the date of final judgment.

The Defendant No.2 is the State agency which has main responsibility for controlling, inspecting, evaluating, and protecting environment with the powers to make recommendations and environmental management plans, and to impose any other measure for the environmental restoration or to tackle pollution problems. According to the definitions of "vehicle" under Section 4 of the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992) and "motor vehicle" under Section 4 paragraphs two and three of Motor Vehicle Act, the public buses and other buses operated under the Defendant No.1 do not fall within these definitions. When these buses are not classified as vehicle and motor vehicle as prescribed by laws under the responsibility of the Defendant No.2, the Defendant No.2 and State officials of the Defendant No.2 have no powers and duties to inspect and control vehicle emissions caused by these buses. However, black smoking from these buses in Bangkok and neighboring areas within the jurisdiction of the Defendant No.1 is still the other point source of pollution under the authority of the Defendant No.2, as prescribed by law. After the receipt of complaints about air pollution from the buses, the Defendant No.2 merely coordinated with the Defendant No.1 and other relating agency to control vehicle emissions without further operation. When the Court considered that the Defendant No.1 was negligent of duties in the control of vehicle emissions, the Defendant No.2 was also negligent of duties in supervising, inspecting, evaluating and protecting environment under the law. Moreover, pursuant to Section 53 (6) of the Enhancement and Conservation of the National Environmental

Quality Act, B.E. 2535 (1992), the Director – General of the Defendant No.2 as a Pollution Control Committee has power and duty to give advice to the Minister of Natural Resources and Environment to issue a notification to impose emissions standard of the public buses and other buses operated under the Defendant No.1 in Bangkok and neighboring in order to enable the officials of the Defendant No.2 to have authority to inspect these buses. The failure to perform such duty is deemed to be the negligence of duties of the Defendant No.2. The Supreme Administrative Court ordered the Defendant No.2 to make an action plan for supervising, inspecting, and controlling the vehicle emissions from the public buses and other buses operated under the Defendant No.1 and to submit the report to the Court every 3 month for the period of 1 year since the date of judgment. In addition, the Court ordered the Defendant No.2 to issue a notification to impose a measure for vehicle emissions standard for the public buses and other buses under the jurisdiction of the Defendant No.1 according to Section 68 of the Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535 (1992).

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