

## Right to be Heard in the Issuance of Factory License <sup>\*</sup>

Supreme Administrative Court Judgment No. AorSor. 1/2560, dated 6 January B.E. 2560 (2017)

*Mr. S. et al. (P)*

*And*

*K. Company (Interpleader)*

*V.*

*Subdistrict Municipality of Nam Phong (D1),*

*Director of General of Department of Industrial Works (D2)*

The issuance of factory license is an administrative order according to Section 5 of Administrative Procedure Act, B.E. 2539 (1996). When the tapioca starch factory is established, it may cause water pollution such as waste water and air pollution such as dust from steam boiler. These environmental pollutions may also affect health and quality of life of people living in this area. The State official shall conduct public hearing before issuing such license in compliance with rules and procedure under Factory Act, B.E. 2535 (1992), Section 30 of Administrative Procedure Act, B.E. 2539 (1996), and relating laws. The public hearing is the material process and procedure binding the State official to practice. When the State official sent a letter to the sheriff and mayor to post the notification on the issuance of tapioca starch factory license without identifying environmental problems on waste water and dust pollutions to the public, it was against the material process and procedure as prescribed by law. In addition, the State official did not conduct public hearing to restore the invalid issuance of license before the case filing, according to Section 41 paragraph one (3) of the said Act. Therefore, the issuance of tapioca starch factory license was unlawful.

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**Legal Principles** : *Audi Alteram Partem (The Right to be Heard), Administrative Order*

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

**Legal Provisions** : *Constitution of the Kingdom of Thailand, B.E. 2550 (2007): Section 57, Section 66, and Section 67*

*Administrative Procedure Act, B.E. 2539 (1996): Section 5, Section 30, and Section 41*

*Factory Act, B.E. 2535 (1992): Section 12*

*National Health Act, B.E. 2550 (2007)*

*Regulation of the Office of the Prime Minister on Public Consultation, B. E. 2548 (2005)*

### **Judgment (Summary)**

The twenty two Plaintiffs claimed that they were aggrieved or injured after the issuance of a tapioca starch factory license and a license to construct the tapioca starch factory made by the Defendant No.2 (Director-General of Department of Industrial Works), and Defendant No.1 (Subdistrict Municipality of Nam Phong), respectively. The operation of tapioca starch factory may affect environment, way of life, and health of people living in this area. The State officials issued such licenses without informing the Plaintiffs and other interest persons about objection rights and the impact on the community, against Sections 66 and 67 of Constitution of the Kingdom of Thailand, B.E. 2550 (2007), National Health Act, B.E. 2550 (2007), Section 30 of Administrative Procedure Act, B.E. 2539 (1996), and Regulation of the Office of the Prime Minister on Public Consultation, B.E. 2548 (2005). The Plaintiffs then filed a case with the Administrative Court to revoke the tapioca starch factory license issued by the Defendant No.2, and the license to construct the tapioca starch factory issued by the Defendant No. 1.

The Supreme Administrative Court held that according to Section 12 of Factory Act, B.E. 2535 (1992), the operator of factory in category 3 shall obtain license from the grantor and “the grantor” under Section 5 of the same Act means the Permanent Secretary or the person appropriately entrusted by the Permanent Secretary. In this case, the Permanent Secretary, issuing an order of the Ministry of Industry no. 32/2551 dated 5<sup>th</sup> March, B.E. 2551 (2008), authorized power to the Defendant No.2 to issue factory licenses, as prescribed by the factory law. The issuance of factory license, which created rights to the factory operator, was an administrative order according to Section 5 of Administrative Procedure Act, B.E. 2539 (1996). In the issuance of the factory license, the State official shall practice in accordance with the process and procedure as prescribed by

the specific law and the Administrative Procedure law. According to Section 30 of the Administrative Procedure Act, B.E. 2539 (1996), an official must give the parties an opportunity to sufficiently know the facts and to oppose thereto and to produce evidence, as the right to be heard. When the State official of the Department of Industrial Works (the Defendant No.2) received the application for the tapioca starch factory license from the operator, the State official shall examine the application and inform the facts on environmental problems to the public. The State official then identified in the examination that the operator of factory used Biogas system to handle with waste water 210,936 cubic meters per day, while the factory contributed waste water about 3,600 cubic meters per day. The operator also used Multi Cyclone system to handle with dust from steam boiler. The State official considered that it was appropriate measure. However, the operation of tapioca starch factory may cause water and air pollutions, affecting health and quality of life of people living in this area. Such environmental pollutions were deemed as material facts to be informed to the public to object the factory operation. The State official, however, only had a letter to the sheriff and mayor to post the notification on the issuance of tapioca starch factory license, without informing the public about the waste water and dust pollutions. People living in this area then did not have an opportunity to sufficiently know the facts and to oppose thereto and to produce their evidence, against Section 57 paragraph one of Constitution of Kingdom of Thailand, B.E. 2550 (2007), Section 30 of Administrative Procedure Act, B.E. 2539 (1996), and Regulation of the Office of the Prime Minister on Public Consultation, B.E. 2548 (2005). Therefore, the issuance of tapioca starch factory license was unlawful.

Moreover, the Defendant No.2 argued that the invalid issuance of the tapioca starch factory license due to the lack of public hearing can be restored, according to Section 41 paragraph one (3) of Administrative Procedure Act, B.E. 2539 (1996). The Defendant No.2 also added that the conduct of public hearing subsequently could restore the invalidity under the same law. The Court ruled that the restoration of invalidity in the administrative order shall be made before the petition process is final, or prior to the case filing, as the case may be. According to this case, the Defendant No.2 issued the tapioca starch factory license without conducting public hearing until the case was filed to the Court. Therefore, the Defendant No.2 could not raise this argument to restore the invalid issuance of tapioca starch factory license because the restoration of invalidity did not make prior to this case filing.