

Unlawful Permit for the Construction of a LPG Service Station^{*}

Supreme Administrative Court Judgment No. A.E. 5/2560, dated 6th July B.E. 2560 (2018)

Mr. P et al. total of 75 persons (P)

v.

Governor of Sukothai (D)

S. Part., Ltd. (Interpleader)

The Defendant unlawfully granted a permit for the construction of a LPG service station to the Interpleader. The LPG service station was set back less than 50 meters from another fuel selling station opposite to the LPG service station. It was inconsistent with Clause 15 (1) of the Ministerial Regulation, No.4, stipulated under the Announcement of the National Executive Council, No. 28, which provides that an area of one service station shall be separated at least 50 meters from other service stations and other fuel oil selling stations located on the side of the same road or highway. Thus, the order for granting a permit of the LPG service station construction issued by the Defendant was unlawful. The Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to revoke the order and ordered the revocation of the order to be in effect retrospectively on the day the order was issued.

Legal Principles: *Administrative Act, Issuance of Order*

Administrative Court Procedure: *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 72 paragraph two*

Legal Provisions: *Ministerial Regulation, No.4 (B.E.2529) (1986), prescribed under Clause 15 (1) of the Announcement of the National Executive Council, No.28, amended by Ministerial Regulation No.5 (B.E. 2531) (1988)*

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Judgment (Summary)

The Interpleader was a juristic person registered as a limited partnership. It intended to operate the liquefied petroleum gas (LPG) filling business so it submitted an application requesting for a permit for a gas filling at a gas service station to the Defendant. The Defendant found that the Department of Public Works and Town Planning inspected land use and determined that the construction of the LPG service station was in compliance with zoning, Tak Highway District 1 also granted the Interpleader permission to build a road used as an entrance and exit to connect to a highway, and the Interpleader was appointed as an authorized agent from S Company. The Defendant thus issued the Interpleader a permit to construct the LPG service station at a designated premise. The Plaintiffs residing in the nearby area of the LPG service station sent a letter dated 25th November 2012 to the Defendant contesting permission of the construction of the LPG service station. The Defendant stated that the premise where the construction would be taken place was in compliance with regulations and laws and was not inconsistent with the characteristics and safety distance of a place of gas filling prescribed by the National Executive Council, No.28, dated 29th December B.E. 2514 (1971). The Plaintiffs argued that the Defendant granted a permit for the construction of the LPG service station by not considering a safety of live and property of the persons residing in the nearby area. The area was a dense community where many people lived and operated a business. If an incident had occurred, there would be loss of lives and property. Therefore, the Plaintiffs filed a plaint with the Administrative Court requesting for revocation of the permit issued by the Defendant and prohibiting the Defendant of granting a private entity permission of the construction of a LPG service station in the disputed area.

The Supreme Administrative Court held that the characteristics and safety distance of a place of gas filling under Clause 15 (1) of the Ministerial Regulation, No.4 (B.E. 2529) (1986), prescribed under the Announcement of the National Executive Council, No.28, amended by the Ministerial Regulation No.5 (B.E. 2531) (1988), specifies the criteria on the safety distance of the premise of a gas service station for motor vehicles. A gas service station shall be set back at least 50 meters from other gas service stations or fuel oil selling stations which are located on the side of the same public road or highway, and a gas storage and dispenser in a service station shall be set back at least 60 meters from a building of an embassy, school, hospital, movie theater or sport stadium. The Regulation did not have purpose to separate gas service stations or fuel oil selling stations located on the same side of the road merely since the safety distance was set to prevent gas and oil dispersion including fire caused by gas or fuel oil to spread to other gas or fuel oil service stations and places prescribed in the Regulation. The fire could spread in large area covered both sides of

the road; it did not limit to only the area on the left or right of a service station. Thus, the safety distance shall also be measured to the opposite side of the road. The Regulation did not clearly define the side of the same public road or highway as the left or right side of the road or any side of the road. Considering the principle, reason and purpose of the Announcement of the National Executive Council, No.28 and the Regulation issued under the Announcement, they intended to establish criteria to control the operation of the liquid petroleum business to prevent fire and a danger to life and property of people and amended the criteria to be suitable to the current circumstance to enhance the safety of operations. As a result, the characteristics and safety distance under Clause 15 (1) of the Ministerial Regulation, No.4, shall be considered in all aspects by measuring the safety distance to other service stations situated on the same and opposite side of the road.

The location of the LPG service station was opposite to another fuel selling station and was set back less than 50 meters from the selling station. It was inconsistent with Clause 15 (1) of the Ministerial Regulation, No.4, stipulated under the Announcement of the National Executive Council, No. 28, which provides that an area of a service station shall be separated at least 50 meters from other service stations and other fuel oil selling stations located on the side of the same road or highway. Therefore, the order for granting a permit of the LPG service station construction issued by the Defendant was unlawful. Accordingly, the Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to revoke the order and ordered the revocation of the order to be in effect retrospectively on the day the order was issued, pursuant to Section 72 paragraph two of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).