

No constitutional right to bear arms—discretion on issuance of a firearm licence^{*}

Supreme Administrative Court Judgment No. A.PA. 130/2565, dated 2nd August B.E. 2565 (2022)

Mr. S. (P)

v.

Firearm Registrar of Mueang Yala District (D1)

Governor of Yala Province (D2)

Minister of Interior (D3)

Given that the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), did not recognise the right to bear arms as a constitutional right, the local firearm registrar shall have discretion over the issuance of a firearm and ammunition licence in accordance with Section 7 and Section 9 of the Firearms, Ammunition, Explosives, Fireworks, and the Imitation Firearms Act, B.E. 2490 (1947). Without the recognition of the inherent right to bear arms in the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), the rejection order of an application for a licence for a firearm and ammunition shall not be deemed as an administrative order that may affect the rights of the parties in the manner that requires the local firearm registrar to give the parties an opportunity to sufficiently know the facts and to present their evidence opposing thereto before issuing the administrative order according to Section 30 paragraph one of the Administrative Procedure Act, B.E. 2539 (1996). In other words, when the Plaintiff submitted an application for a licence for a firearm and ammunition, the said application did not have any rights as its legal basis; thus, the rejection of firearm licence issuance by the Defendant No. 1 was just as an affirmation of the fact that there was no such right of the Plaintiff to be affected by the administrative proceeding to begin with. Providing that the Plaintiff already acquired five firearms, the Defendant No. 1 lawfully exercised his discretion to reject the issuance of the new licence for the firearm and ammunition on the basis that the firearms in possession of the Plaintiff are deemed to be far beyond necessary for the purpose of defending oneself and one's properties.

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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 9 paragraph one (1) and (2)*

Legal Provisions: *Constitution of the Kingdom of Thailand, B.E. 2550 (2007)*
Administrative Procedure Act, B.E. 2539 (1996): Section 30 paragraph one and Section 45 paragraph two
Firearms, Ammunition, Explosives, Fireworks, and Imitation Firearms Act, B.E. 2490 (1947): Section 7, Section 9, Section 13 and Section 63

Judgment (Summary)

The Plaintiff, who was a professional-level psychologist of the Yala Juvenile and Family Court, subscribed to the program of the Office of the Judiciary in procuring firearms for the purpose of self-defense of its personnel. The firearms that were procured were of the semi-automatic pistol type, specifically the GLOCK 19 Gen 4 in 9 mm Luger. Afterwards, the Plaintiff submitted an application for a licence for a firearm and ammunition of the said pistol to the Defendant No. 1 on 25th August B.E. 2559 (2016). In order to verify, the Defendant No. 1 looked into the database of the Department of Provincial Administration of the Ministry of Interior and found that the Plaintiff had already acquired five firearm licences prior to the application in question. Those previous licences were as follows: 1) short gun—Smith & Wesson .38 revolvers; 2) long gun—Remington 12GA Pump-Action Shotgun; 3) short gun—unidentified brand semi-automatic pistol .45; 4) long gun—CZ .22 rimfire rifle; and 5) short gun—Sig Sauer semi-automatic pistol .45. The Defendant No. 1 was convinced that the Plaintiff already acquired too many firearms beyond what was necessary for the purpose of defending oneself and one's properties. Consequently, the Defendant No. 1 rejected the issuance of licence for a firearm and ammunition of the GLOCK 19 Gen 4 in 9 mm Luger pistol and submitted a written notification, dated 31st August B.E. 2559 (2016), to the Plaintiff regarding the said determination along with the Plaintiff's right to appeal the decision to the Defendant No. 3. The Plaintiff submitted three written appeals, dated 5th September B.E. 2559 (2016), to the Defendants No. 1, No. 2 and No. 3 respectively. The Defendant No. 1 later realised that the rejection of the firearm licence as requested was deemed an administrative order that may affect the rights of the party in which an official must give the party an opportunity to sufficiently know the facts and to oppose thereto and to produce his evidence according to Section 30 paragraph one of the Administrative Procedure Act, B.E. 2539 (1996). With that being said, the Defendant No. 1 subsequently rectified his action by submitting a written notification to grant the Plaintiff an opportunity to exercise his right in presenting evidence in an administrative proceeding

within 15 days from the date of receipt of the notification. However, the Plaintiff expressed his stance in writing to the Defendant No. 1 that he did not wish to use that opportunity and asked the Defendant No. 1 to proceed according to the law. As for the direct appeal from the Plaintiff to the Defendant No. 2, the Defendant No. 2 replied to the Plaintiff in writing that he was not the person who has the power to consider the appeal in this matter. However, the Defendant No. 3, who had the power to consider the appeal, did not make any decision on this matter even though 30 days had passed since the date of receipt of the appeal. The Plaintiff was of the view that the issuance of the rejection order was unlawful on various grounds. Firstly, the Plaintiff argued that he was deprived of his right to be heard in an administrative proceeding prior to the issuance of a rejection order. Secondly, the Plaintiff asserted that he did not have any disqualifications according to Section 13 of the Firearms, Ammunition, Explosives, Fireworks, and Imitation Firearms Act, B.E. 2490 (1947); thus, the limit on the number of firearms in possession of civilians was not applicable to him since it was not stipulated in the said Act but only stipulated in an internal guideline of the Ministry of Interior. Thirdly, the Plaintiff argued that since he was already qualified to subscribe to the firearm procurement program of the Office of the Judiciary, the Defendant No. 1 should be bound to issue a firearm and ammunition of the procured pistol accordingly. Subsequently, the Plaintiff filed a case with the Administrative Court of First Instance, requesting the Court as follows: 1) to order the Defendant No. 3 to consider the appeal within the timeframe in accordance with the law; 2) to revoke the rejection order of the Defendant No. 1 in granting a licence for a firearm and ammunition as requested by the Plaintiff; and 3) to determine that the Defendant No. 2 also has the authority to oversee this matter and could revoke the rejection order of the Defendant No. 1.

The Supreme Administrative Court held that according to Section 7 and Section 9 of the Firearms, Ammunition, Explosives, Fireworks, and Imitation Firearms Act, B.E. 2490 (1947), the Defendant no. 1 had discretion in the issuance of a firearm licence. Even though the Plaintiff was qualified by the Office of the Judiciary to subscribe to the firearm procurement program, the Defendant No. 1 was not obligated to issue a licence for the firearm and ammunition of the procured pistol without any room for discretion. Given that the Plaintiff worked in the position that was relatively non-risk-exposed and lived in the city center area of Yala Province with 5 firearms in possession, the rejection order of the Defendant No. 1 was not made in the manner amounting to undue exercise of discretion. As for the Plaintiff's claim regarding the violation of the Administrative Procedure Act, B.E. 2539 (1996), by not giving him an opportunity to present evidence in an administrative proceeding, the Court ruled that since the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), did not recognise the right to bear arms as a constitutional right, the rejection of the application for a licence for a firearm and ammunition

was lawful. When the Plaintiff submitted an application for a licence for a firearm and ammunition, that application did not have any rights as its legal basis; thus, the rejection of firearm licence issuance by the Defendant No. 1 was just as an affirmation of the fact that there was no such right of the Plaintiff to be affected by the administrative proceeding to begin with. As a result, Section 30 paragraph one of the Administrative Procedure Act, B.E. 2539 (1996), was not applicable in this case because the said order could not be deemed an administrative order that may affect the rights of the parties in the manner that requires the Defendant No. 1 to conduct a hearing before issuing the administrative order. The Court also affirmed that the Defendant No. 2 did not have any duty to consider the appeal in this matter; thus, he could not be deemed to be neglecting his official duties required by the law. As for the Defendant No. 3, it appeared that the Defendant No.3, who was the person having the power to consider the appeal according to Section 63 of the Firearms, Ammunition, Explosives, Fireworks, and Imitation Firearms Act, B.E. 2490 (1947). It appeared that the Defendant No.3 did not issue his decision within the period in accordance with Section 45 paragraph two of the Administrative Procedure Act, B.E. 2539 (1996), which could be deemed as neglecting his official duties required by the law. However, given that the Defendant No. 3 eventually issued his decision after the Plaintiff filed this case with the Administrative Court of First Instance, the Court ruled that there was no further need for the Court to issue a decree to the Defendant No. 3 to consider the appeal as requested by the Plaintiff.

Accordingly, the Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to dismiss this case.

Keyword: Constitution of the Kingdom of Thailand, firearm licence, administrative order, discretion, right to be heard in an administrative proceeding, right to bear arms

คำสำคัญ: รัฐธรรมนูญแห่งราชอาณาจักรไทย ใบอนุญาตให้มีและใช้อาวุธปืน คำสั่งทางปกครอง ดุลยพินิจ หลักการรับฟังคู่กรณี สิทธิในการครอบครองและพกอาวุธ

(แบบสำรวจความคิดเห็นต่อเอกสารวิชาการ ที่จัดทำโดยบุคลากรสำนักวิจัยและวิชาการ)



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