

Constitutional Freedom of Trade and Occupation as a Legal Ground for Gambling License Applications *

Supreme Administrative Court Judgment A.PA. 13/2567, dated 29 January B.E. 2567 (2024)

Siam Lotto Co., Ltd. (P)

v.

District Chief of Mueang Nonthaburi District (D1)

Governor of Nonthaburi Province (D2)

In Thailand, the gambling industry was strictly regulated, with legal authorization granted only for a limited range of activities. When the Plaintiff submitted a request for a license to conduct gambling activities in the form of predicting the outcomes of sporting events, the Defendants— as licensing officers —were deemed to have lacked the legal competence to issue such a license, as there was no statutory provision specifying the title or conditions under which such a license could be granted. As for the application for licenses to conduct gambling activities such as lotteries, scratch cards, or other games of chance that offered monetary rewards to participants, although the law may have conferred discretionary authority upon the licensing officer, the exercise of such discretion must be bounded by the applicable legal framework. Given that there had been a Cabinet Resolution, dated 24 June B.E. 2523 (1980), prohibiting government agencies from issuing lotteries pursuant to the Gambling Act, B.E. 2478 (1935), along with a policy adopted by the Ministry of Interior aimed at the eradication of vice-related establishments, the decision of the Defendants to deny the issuance of a gambling license was regarded as a lawful and reasonable exercise of administrative discretion.

Legal Principles: *Administrative Order, Constitutional Freedom, Freedom of Trade and Occupation*

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

* Summarized by Nutchakorn Aksornpan, Administrative Case Official, Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts

Legal Provisions: *Constitution of the Kingdom of Thailand, B.E. 2550 (2007): Section 43 and Section 84(1) Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014): Section 4 Gambling Act, B.E. 2478 (1935): Sections 4 and Section 4bis Government Lottery Office Act, B.E. 2517 (1974): Section 5 and Section 6 Ministerial Regulation No. 17, B.E. 2503 (1960) issued under the Gambling Act, B.E. 2478 (1935) as amended by Ministerial Regulation No. 44, B.E. 2548 (2005): Rule 4*

Judgment (Summary)

The Plaintiff was a limited liability company incorporated in Thailand that aimed to conduct its business in the gambling industry—specifically in the form of online sports betting, online lottery, and scratch card games. In doing so, the Plaintiff submitted a request to the Defendant No. 1, who was the licensing officer pursuant to the Gambling Act, B.E. 2478 (1935), for licenses to conduct gambling activities.

The Defendant No. 1 determined that sports betting did not fall under Section 4 of the Gambling Act, B.E. 2478 (1935), which referred to Lists A and B annexed to the said Act to specify types or conditions under which such games could be legally licensed. According to Section 4bis of the same Act, all gambling activities other than those mentioned under Lists A and B could be permitted for gambling only when such games were named and their conditions for gambling were specified in Ministerial Regulation. As sports betting was not included in the current Ministerial Regulation—Ministerial Regulation No. 17, B.E. 2503 (1960), issued under the Gambling Act, B.E. 2478 (1935), as amended by Ministerial Regulation No. 44, B.E. 2548 (2005) ('Ministerial Regulation No. 17')—the Defendant No. 1 concluded that a license for sports betting could not be granted due to the absence of a statutory basis.

Regarding the application for a lottery license and a scratch card games license, the Defendant No. 1 determined that those games of chance were outlined in List B annexed to the Gambling Act, B.E. 2478 (1935). Nevertheless, the issuance of any license for those types of gambling in question must follow the procedure prescribed by Rule 4 of Ministerial Regulation No. 17; thus, the Defendant No. 1 could only issue those licenses when the Defendant No. 2 considers it appropriate and grants permission to do so. Thereafter, the Defendant No. 1 submitted a report on the Plaintiff's application for a lottery license and a scratch card games license to the Defendant No. 2, who would decide whether to issue the licenses as requested. The Defendant No. 2 took into account a Cabinet Resolution, dated 24 June B.E. 2523 (1980), which prohibited government agencies, state enterprises, and private individuals from issuing lotteries pursuant to the Gambling

Act, B.E. 2478 (1935), along with a policy adopted by the Ministry of Interior aimed at the eradication of vice-related establishments, and decided to deny the Plaintiff's application for licenses to conduct online sports betting, online lottery, and scratch card games altogether. The Defendant No. 1 notified the Plaintiff in writing of the rejection order, dated 24 September B.E. 2558 (2015).

The Plaintiff appealed the said decision to the Defendant No. 2, but the appeal was unsuccessful. Subsequently, the Plaintiff filed a plaint with the Administrative Court of First Instance, claiming that the rejection of gambling licenses application was unlawful. The Plaintiff argued that the Defendants' rejection order was contrary to Section 84(1) of the Constitution of the Kingdom of Thailand, B.E. 2550 (2007), which promoted a free and equitable economy through market forces and required the State to refrain from engaging in business activities in competition with the private sector. Given that the lottery operator license had been granted to the Government Lottery Office—a state enterprise—solely for over 10 years, the Plaintiff believed the State had endorsed a monopolization of this industry, which ultimately violated the Plaintiff's constitutional freedom of trade and occupation. The Plaintiff also argued that the relevant legal frameworks, including the Gambling Act, B.E. 2478 (1935), Ministerial Regulation, and Cabinet Resolution, constituted unfair discrimination against the Plaintiff and were inconsistent with the fundamental rights and freedoms guaranteed by the Constitution of the Kingdom of Thailand. Based on these claims, the Plaintiff sought the Administrative Court of First Instance to revoke the rejection order issued by the Defendant No. 1 and the decision on the appeal by the Defendant No. 2.

The Administrative Court of First Instance upheld the decisions of the Defendants and dismissed the case. The Court held that the request for licenses to conduct gambling activities that the Plaintiff submitted to the Defendant No. 1 could be examined as two applications: one for sports betting and another for online lottery and scratch card games. As for the application for a sports betting license, the Court affirmed the Defendant No. 1's rationale. The Court ruled that the rejection order issued by the Defendant No. 1 and the decision on the appeal by the Defendant No. 2 due to the lack of legal competence resulting from the absence of a statutory basis in this matter were lawful according to Section 4 and Section 4bis along with Ministerial Regulation No. 17. Regarding the application for online lottery and scratch card games, the Court also ruled that the Defendants issued the rejection order lawfully. The Court found that the Defendants had reasonably exercised their administrative discretion to make that decision by giving consideration to relevant law and applicable Cabinet Resolution, which prohibited government agencies, state enterprises, and private individuals from issuing lotteries

pursuant to the Gambling Act, B.E. 2478 (1935), along with the Ministry of Interior's policy on eradicating illegal gambling sites or vice-related establishments. Consequently, the Plaintiff appealed the Administrative Court's judgment to the Supreme Administrative Court.

The Supreme Administrative Court rejected the Plaintiff's argument that the Defendants' exercise of discretion unconstitutionally restricted the constitutional freedom of trade and occupation of the Plaintiff. The Court stated that since section 4 of the Constitution of the Kingdom of Thailand (Interim), B.E. 2557 (2014)—the governing law at the time of the dispute—guaranteed that human dignity, rights, liberties and equality previously enjoyed by the Thai people shall be protected under this Constitution, the constitutional freedom of trade and occupation which was prescribed in Section 43 of the previous Constitution—Constitution of the Kingdom of Thailand, B.E. 2550 (2007)—was applicable in this case. Nonetheless, the Constitution also empowered the State to impose legal restrictions on such freedoms when necessary to safeguard national security or the public interest. Since gambling was known to be a source of crime and poverty, and negatively impacted the society, the enactment of the Gambling Act, B.E. 2478 (1935) was necessary to serve as the State's regulatory tool by clearly prohibiting certain forms of gambling and requiring a license for others. While this may have appeared to restrict occupational freedom, it was justified as a means of protecting the public from gambling addiction and preserving public order. Furthermore, although both the Plaintiff and the Government Lottery Office were juristic persons, their roles and responsibilities were fundamentally different since the Government Lottery Office had been operated for the benefit of the public in accordance with Section 5 and Section 6 of the Government Lottery Office Act, B.E. 2517 (1974). As such, the case could not be seen as one of unfair discrimination.

The Supreme Administrative Court ruled that the Defendants' decisions were lawful and upheld the Administrative Court of First Instance in dismissing the case.

Keywords: Constitutional Freedom of Occupation, Constitution, Gambling

คำสำคัญ: เสรีภาพตามรัฐธรรมนูญในการประกอบอาชีพ รัฐธรรมนูญ การพนัน

(แบบสำรวจความคิดเห็นต่อเอกสารวิชาการ ที่จัดทำโดยบุคลากรสำนักวิจัยและวิชาการ)



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