

## Revocation of Administrative Orders which were Terminated by Time Constraint\*

Supreme Administrative Court Judgment No. A. 1475/2559, dated 11<sup>st</sup> July B.E. 2559 (2016)

*Mrs. P (P) et al.*

v.

*Chief Executive of the Na Tum Subdistrict Administrative Organisation (D1)*

*and Energy Regulatory Commission (D2)*

Licenses to construct a biomass power plant issued by Chief Executive of Subdistrict Administrative Organisation, who has no power to do so, were unlawful administrative orders which may be revoked. The termination of unlawful orders by time constraint did not affect the existence of such orders. In the absence of revocation, the said licenses remained unlawful and the construction of biomass power plant authorised by such licenses was thus illegal. Nonetheless, the owner of biomass power plant may submit the application for the correct construction licenses to Energy Regulatory Commission, the competent official under Energy Industry Act, B.E.2550 (2007), in order to legitimise the construction of biomass power plant. Hence, the Court revoked the licenses with retroactive effect from the date of issue.

**Legal Principles** : *Administrative Order, Negligence of Official Duty,*

**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** : *Energy Industry Act, B.E. 2550 (2007): Section 47 paragraph one, Section 48 paragraph one and Section 49 paragraph one*

*Building Control Act, B.E. 2522 (1979): Section 21*

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

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### Judgment (Summary)

The Plaintiffs claimed to be aggrieved or injured because Defendant No.1 had issued construction licenses which allowed Yala Green Energy Co., Ltd. (the Intervener) to build a biomass power plant in the area where the Plaintiffs reside, as the power plant will cause pollution and affect the livelihood of residents in the area. Moreover, to construct a biomass power plant was not the construction of an ordinary building stated in the Building Control Act, B.E. 2522 (1979), but was the construction of a power plant which produced electricity by burning wood chips – a Category 3 factory pursuant to the Factory Act, B.E. 2535 (1992) and an energy industry regulated by Defendant No.2 according to the Energy Industry Act B.E.2550 (2007). The issuance of construction licenses to the Intervener by Defendant No.1 was thus unlawful. Therefore, the Plaintiffs filed the case requesting the Court to revoke the construction licenses and order Defendant No.2 to perform its duty by ordering the Intervener to stop the construction of biomass power plant.

The Supreme Administrative Court held that Defendant No.1 was not the competent official empowered to grant permission to construct buildings or establish factories for the purpose of energy industry operation according to Section 48 paragraph one of the Energy Industry Act B.E.2550 (2007); therefore, the licenses issued by Defendant No.1 to permit the construction of the Intervener's biomass power plant were unlawful. The said licenses were unlawful administrative orders which may be revoked, but they were terminated by time constraint during court proceedings and presently ineffective. However, while being valid they served as the basis for the construction of the Intervener's biomass power plant. In the absence of revocation, the licenses remained unlawful, and the construction of biomass power plant authorised by such licenses was thus illegal. Nonetheless, the Intervener may submit the application for the correct construction licenses to Defendant No.2 pursuant to Section 48 paragraph one of the Energy Industry, Act B.E.2550 (2007) so as to legitimise the construction of biomass power plant. Consequently, the Court revoked the licenses with retroactive effect from the date of issue.

According to Section 47 paragraph one, Section 48 paragraph one and Section 49 paragraph one of the Energy Industry Act, B.E.2550 (2007), the granting of permission under the law on factories, the law on building control, the law on town and country planning, and the law on energy development and promotion shall be under the power and duties of Defendant No.2. Also, Defendant No.2 has the power to order a business operator who is considered to be an energy industry operator requiring a license but has not yet obtained any license to stop or suspend the energy industry operation, or to disconnect from an energy network system. However, the Energy Industry Act, B.E.2550 (2007) did not stipulate that Defendant No.2 shall have the power and duties under the Building Control

Act, B.E.2522 (1979) to order an operator to stop or suspend the building construction or modification for the purpose of energy industry operation which violates the Building Control Act, B.E.2522 (1979). Such power is vested with the local official. Therefore, Defendant No.2 was not negligent in performing official duties required by the law for not ordering the Intervener to stop the construction of biomass power plant.