

Condition of Degree Recognition Inconsistent with the Law^{*}

Supreme Administrative Court Judgment No. A. 324/2560, dated 31st March B.E. 2560 (2017)

Mr. Songwut (P1)

Mr. Sumrit (P2)¹

v.

Council of Engineers (D)

The Plaintiff No.1 applied for a license for professional practice (associate engineer) to the Defendant but it requested the Plaintiff No.1 to take an examination of specific required courses for obtaining the license. The Supreme Administrative Court held that the requirement provided in the Council of Engineers Regulation on Recognition of Degree, Diploma, or Certificate for Regulated Engineering Professional Practice, B.E. 2543 (2000) was not applied to the Plaintiff No.1 since he enrolled in a program prior to the academic year of 2001. However, the Plaintiff No.1 was subject to the Announcement of the Council of Engineers No. 4/2554 on Application for a License for Professional Practice (Associate Engineer). He graduated in Bachelor of Engineering (Civil Engineering) from A University by earning more credits as required by the Announcement; he thus did not have to pass either an examination of specific engineering courses or basic engineering and specific engineering courses. Additionally, the Defendant recognized the Engineering program of A University by the condition that an applicant for the license who graduated from A University has to take an examination of engineering for obtaining the license without any exception. The condition did comply with the Council of Engineers Regulation on Issuance of a License for Professional Practice (Associate Engineer) and the Announcement of the Council of Engineers No. 4/2554 so the rules were not enforceable. Therefore, the Defendant's order requesting the Plaintiff No.1 to take the examination for acquiring the license was unlawful pursuant to Section 9 paragraph one (1) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

^{*} Summarized by Kitiwan Khantitirat, Bachelor of Laws (LL.B.), Chulalongkorn University, Master of Laws (LL.M.) in International Law, Thammasat University, Master of Laws (LL.M.), Georgetown University, United States of America, Administrative Case Official, Practitioner Level, Public Law Study Group 3, Bureau of Research and Legal Studies, the Office of the Administrative Courts.

¹ Plaintiff No.2 withdrew a plaint and the Administrative Court of First Instance granted permission.

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)*

Legal Provisions: *Council of Engineers Regulation on Recognition of Degree, Diploma, or Certificate for Regulated Engineering Professional Practice, B.E. 2543 (2000)*

Council of Engineers Regulation on Issuance of a License for Professional Practice (Associate Engineer), B.E. 2543 (2000)

Announcement of the Council of Engineers No. 4/2554

Judgment (Summary)

The Plaintiff No.1 enrolled in Bachelor of Engineering (Civil Engineering) program at A University in the academic year of 1999 and earned the degree in the academic year of 2001. He later applied for a license for professional practice (associate engineer) to the Defendant on 10th April 2002. The Defendant notified that the Plaintiff No.1 was required to take an examination of specific required courses for obtaining the license. The Plaintiff No.1 filed an appeal against the Defendant's order requiring the Plaintiff No.1 to take the examination and then filed a case with the Administrative Court requesting the Court to revoke the Defendant's order and order the Defendant to issue the license to the Plaintiff No.1.

The Supreme Administrative Court held that at the time the Plaintiff No.1 applied for the license for professional practice, he was subject to the requirement specified in the Engineering Act, B.E. 2542 (1999). However, the requirement provided in the Council of Engineers Regulation on Recognition of Degree, Diploma, or Certificate for Regulated Engineering Professional Practice, B.E. 2543 (2000) was not applied to Plaintiffs since the regulation was applied to a person who enrolled in a program in the academic year of 2001 onwards. Although, the Plaintiff No.1 started studying the Bachelor of Engineering (Civil Engineering) program prior to 2001, he was not able to apply for the license for professional practice under the regulation issued by the virtue of the Engineering Profession Act, B.E. 2505 (1962) because the Defendant had not certified the A University's program. But the Plaintiff No.1 could apply for the license under the Announcement of the Council of Engineers No. 4/2554 on application for a license for professional practice (associate engineer), dated 15th January 2002. The Announcement set a requirement for an applicant for the license and was effective on 15th February 2002. It provides that an applicant, who enrolled any course

from a list (No.1 – 9) and earned 27 - 38 credits and any course from a list (No.1 – 4) and earned 12 - 17 credits, must pass a test of specific engineering courses. It was found that the Plaintiff No.1 graduated the degree by earning more credits as required by the Announcement. Thus, he did not have to pass either examination of specific engineering courses or basic engineering and specific engineering courses for degree equivalence. Moreover, the Council of Engineers Regulation on Issuance of a License for Professional Practice (Associate Engineer), B.E 2543 (2000) and the Announcement of the Council of Engineers No. 4/2554 on application for a license for professional practice (associate engineer) establish the similar requirement that whether examination is required, it depends on courses enrolled and the number of credit earned. Both regulation and announcement were consistent with the resolution of Council Board adopted in the 9/2542 meeting that a person who enrolled in the academic year of 2000 onwards and graduated in the degree approved by the Council Board as equivalent degree have to take an examination to obtain the license. The Defendant recognized the program of A University (1989) by the condition that an applicant for the license who graduated from A University has to take an examination of engineering for obtaining the license without any exception. The condition does not comply with the Council of Engineers Regulation on Issuance of a License for Professional Practice (Associate Engineer) and the Announcement of the Council of Engineers No. 4/2554 so it could not be applied to Plaintiff No.1. The Defendant's order not to issue the license to Plaintiff No.1 was unlawful pursuant to Section 9 paragraph one (1) of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

Accordingly, the judgment of the Administrative Court of First Instance was affirmed in part as modified by the judgment of the Supreme Administrative Court. The Supreme Administrative Court modified the judgment of the Administrative Courts of First Instance to revoke the resolution of the Defendant, dated 11th April 2005 in effect on the adoption date of the resolution and the Defendant shall revoke the resolution within 90 days since the judgment is final.