

Unlawful Order to Not Score an Examination^{*}

Supreme Administrative Court Judgment No. A. 994/2561, dated 10th October B.E. 2561 (2018)

Mr. P (P)

v.

Chairman of the Committee of Consortium of Thai Medical Schools (D1)

Consortium of Thai Medical Schools (D2)

The Plaintiff's mobile phone inside his bag, which was placed outside an examination room, continuously rang about 10 times while he was taking an examination for entry to the Doctor of Medicine program. As a result, the Defendant No.2 did not score the Plaintiff's test paper providing that he violated the Rule of the Consortium of Thai Medical Schools on Examination which requires an examinee to turn off his or her mobile phone or other communication devices. The Administrative Court held that the Plaintiff complied with the Rule. He powered off his mobile phone but the sound ringing from his mobile phone was an alarm which he set to study. The Plaintiff could not use the mobile phone while he was taking the exam since the mobile phone was 20 - 25 meters away from the examination room. Although, the Rule provides that if it is found that there is a sound or a communication signal, or there is incompliance with the Rule, it is deemed that there is an intention to cheat an examination and the exam will not be scored, it was not an absolute presumption which could not be proved otherwise. The Defendant No.2 exercised its discretion inconsistent with the legal purpose and exercised its power without considering facts along with other circumstances. The order not to score the examination was unlawfully issued by the Defendant No.2. The Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to revoke the order of the Defendant No.2 not to score the examination for entry to the Doctor of Medicine program in the year of 2011.

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)*

^{*} 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.

Judgment (Summary)

The Plaintiff took an examination in Thai language and social science held on 22nd January 2011 between 15.00 and 17.00 at Chulalongkorn University. While the Plaintiff was taking the exam, the Plaintiff's mobile phone inside his bag, which was placed outside an examination room, continuously rang about 10 times. After the examination had ended, members of the Committee on Examination called the Plaintiff for an inquiry. They found that the Plaintiff's mobile phone was powered off but a battery was not taken off so they asked the Plaintiff to set an alarm and an alarm sound was the same sound that they heard during the examination. When they called the Plaintiff's phone number, a sound for incoming call was different from the alarm sound. In addition, there was no missed call at 16.00 shown on the mobile phone. The Committee wrote a memo of the incident and the Plaintiff signed his name for acknowledgement in the memo. Later, the Plaintiff checked his test result online and found that the Defendant No.2 did not score the Thai language and social science test providing that he violated the Rule of the Consortium of Thai Medical Schools on Examination because he did not switch off a mobile phone or a sound of a mobile phone was ringing during an examination. The Plaintiff then filed a plaint with the Administrative Court requesting for revocation of the order to not score his test paper issued by the Defendant No.2 and vacating any acts performed by the Defendants which would result in denying the Plaintiff's right to be admitted into the Doctor of Medicine program.

The Supreme Administrative Court held that Clause 5 of the Rule of the Consortium of Thai Medical Schools on Examination provides that an examinee is not allowed to carry a mobile phone or any type of communication device; if he or she has it, the devices must be turned off and placed in the area designated by the Committee, and if it is found that there is a sound or a communication signal, or there is incompliance with the Rule, it is deemed that there is an intention to cheat an examination and the exam will not be scored. The provision of the Rule was a measure established to prevent exam cheating by deterring the use of a modern communication technology in exam cheating so that the examination was fairly and transparently conducted and to prevent disturbances to other examinees. The Plaintiff's mobile phone was in the area designated by the Committee outside the examination room and it was placed 20 – 25 meters away from the point where the Plaintiff was taking the test. The examination room was an air-conditioned room which had to be entered through two entrance doors. The Plaintiff put his mobile phone in his bag and he left it in the area designated by the Committee before he entered the examination room. He could not use his belonging while he was taking the examination. Thus, he complied with Clause 5 of the Rule of the Consortium of Thai Medical Schools on Examination. The Plaintiff set an alarm to study and the alarm still worked even though he

turned his mobile phone off. A sound from the mobile phone was different from a sound for incoming call and there was no missed call at 16.00 shown on the mobile phone. Moreover, there was no fact present that other examinees heard the sound of the Plaintiff's mobile phone. Therefore, the sound from the mobile phone was not a sound for incoming call or other signals. It would not imply exam cheating or present that there was the utilization of a modern technology in exam cheating. The sound did not disturb other examinees or would cause disadvantages which impede a fair competition. In this case, the Plaintiff was not in violation of the Rule prescribed by the Consortium of Thai Medical Schools. Although, the Rule provides that if it is found that there is a sound or a communication signal, or there is incompliance with the Rule, it is deemed that there is an intention to cheat an examination and the exam will not be scored, it was not an absolute presumption that could not be proved otherwise. The Defendant No.2 considered the incident to support its decision to not score the Plaintiff's test paper. The Defendant No.2 exercised its discretion inconsistent to the purpose of the law which intended to implement the measure to ensure that the examination was fair and to punish a person who cheats in an exam. Additionally, the Defendant No.2 exercised the power without considering facts along with other circumstances. The order not to score the examination was unlawfully issued by the Defendant No.2, pursuant to Section 9 paragraph one (1) of the Act on the Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999).

Accordingly, the Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to revoke the order of the Defendant No.2 not to score the examination for entry to the Doctor of Medicine program in the year of 2011.