SPC Guiding Case No. 101: Luo Yuanchang v. the Local Maritime Affairs Office of Pengshui Miao and Tujia Autonomous County, Chongqing (Government Information Disclosure)

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SPC Guiding Case No. 101

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Keywords

Administrative; government information disclosure; information does not exist; obligation to search

Holding

In a government information disclosure case, where the defendant replies to the plaintiff on the ground that the government information does not exist, the people's court shall examine whether the defendant has fulfilled a sufficiently reasonable obligation to search for and retrieve the information. Where the plaintiff has submitted preliminary evidence such as clues indicating that the government information was produced or retained by the defendant, and the defendant is unable to provide contrary evidence and to prove, by presenting evidence, that it has fulfilled a sufficiently reasonable obligation to search for and retrieve the information, the people's court shall not support the defendant's claim that the government information does not exist.

Basic Facts

The plaintiff Luo Yuanchang was the owner of the vessel Xingyun No. 2, engaged in shipping, sand extraction, and other business in the Wujiang River basin. On November 17, 2014, because it was needed for a property damage compensation dispute case brought by Luo Yuanchang against Chongqing Datang International Pengshui Hydropower Development Co., Ltd., Luo Yuanchang mailed a written government information disclosure application by postal express delivery to the defendant, the Local Maritime Affairs Office of Pengshui Miao and Tujia Autonomous County, Chongqing (hereinafter the "Pengshui County Local Maritime Affairs Office"). The specific contents of the application were: 1. disclosure of the documents concerning the establishment, main duties, internal institutions, and staffing of the Port and Shipping Administration Office of Pengshui Miao and Tujia Autonomous County (hereinafter the "Pengshui County Port and Shipping Office") and the Pengshui County Local Maritime Affairs Office; and 2. disclosure of the maritime investigation reports and all other accident materials for the following accidents: the two safety accidents of Xingyun No. 2 on May 18, 2008, and September 30, 2008, and the safety accidents of vessels such as Xinyuan No. 306, Xinyuan No. 308, Gaogu No. 6, and Ronghua that occurred between 2008 and 2010.

The Pengshui County Local Maritime Affairs Office, after signing for receipt on November 19, 2014, did not reply to Luo Yuanchang within the statutory time limit, and Luo Yuanchang brought an administrative lawsuit in the People's Court of Pengshui Miao and Tujia Autonomous County (hereinafter the "Pengshui County Court"). On January 23, 2015, the Pengshui County Local Maritime Affairs Office issued Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006, stating: first, it notified Luo Yuanchang of the manner and channel for obtaining the information on the internal institution names and other matters of the Pengshui County Port and Shipping Office and the Pengshui County Local Maritime Affairs Office for which disclosure was applied; and second, upon examination, the government information, namely the

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maritime investigation reports and all other accident materials for which disclosure was applied, did not exist. On March 31, 2015, the Pengshui County Court rendered Administrative Judgment No. (2015) Peng Fa Xing Chu Zi No. 00008 in the case, confirming that the Pengshui County Local Maritime Affairs Office's failure to reply within the statutory time limit after receiving Luo Yuanchang's government information disclosure application was unlawful.

On April 22, 2015, Luo Yuanchang brought an administrative lawsuit on the ground that the Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006 issued by the Pengshui County Local Maritime Affairs Office did not conform to the law and was inconsistent with the facts, requesting revocation of the Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006 issued by the Pengshui County Local Maritime Affairs Office, and that the Pengshui County Local Maritime Affairs Office disclose to Luo Yuanchang the maritime investigation reports and all accident materials involving the vessel Xingyun No. 2.

It was additionally found that Luo Yuanchang submitted materials including the "Investigation and Assessment Report on the Navigation Suspension and Obstruction Issues of the Wujiang Pengshui Hydropower Station," the "Report of the Pengshui County Local Maritime Affairs Office on the Vessel Grounding Accidents Caused by the Irregular Water Storage of the Wujiang Pengshui Wanzu Hydropower Station in the Past Two Years," and the "Letter of the Chongqing Municipal Development and Reform Commission on Commissioning the Investigation and Assessment of the Navigation Suspension and Obstruction Issues of the Wujiang Pengshui Hydropower Station (Yu Fa Gai Neng Han [2009] No. 562)," concerning the whole-vessel grounding accident of Xingyun No. 2 at Gaogu Changtanzi, Pengshui, on May 18, 2008, and the sinking accident at Gaogu Meitangou, Pengshui, on September 30, 2008. During the second-instance proceedings of the case, the Pengshui County Local Maritime Affairs Office voluntarily revoked the Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006 it had issued, but Luo Yuanchang persisted in the lawsuit.

Judgment

On June 5, 2015, the People's Court of Pengshui Miao and Tujia Autonomous County, Chongqing, rendered Administrative Judgment No. (2015) Peng Fa Xing Chu Zi No. 00039, rejecting Luo Yuanchang's claims. Luo Yuanchang, dissatisfied with the first-instance judgment, appealed. On September 18, 2015, the Fourth Intermediate People's Court of Chongqing rendered Administrative Judgment No. (2015) Yu Si Zhong Fa Xing Zhong Zi No. 00050, revoking Administrative Judgment No. (2015) Peng Fa Xing Chu Zi No. 00039, and confirming that the administrative act of the Pengshui Miao and Tujia Autonomous County Local Maritime Affairs Office in issuing the Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006 on January 23, 2015, was unlawful.

Reasoning

The court in its effective judgment held: Article 13 of the Regulations of the People's Republic of China on the Disclosure of Government Information provides that, apart from the government information that administrative organs actively disclose as provided in Articles 9, 10, 11, and 12 of these Regulations, citizens, legal persons, or other organizations may also, based on their special needs in production, living, scientific research, and other matters, apply to departments of the State Council, local people's governments at various levels, and departments of local people's governments at or above the county level to obtain relevant government information. The Pengshui County Local Maritime Affairs Office, as an administrative organ, bore the statutory duty to reply to Luo Yuanchang's government information disclosure application and to provide government information. Under Article 2 of the Regulations of the People's Republic of China on the Disclosure of Government Information, which provides that "government information as referred to in these Regulations means information produced or obtained by administrative organs in the course of performing their duties, and recorded and preserved in a certain form," the documents concerning the establishment, main duties, internal institutions, and staffing of the Pengshui County Port and Shipping

Office and the Pengshui County Local Maritime Affairs Office, for which Luo Yuanchang applied for disclosure, were information produced or obtained by the Pengshui County Local Maritime Affairs Office in the course of performing its duties, recorded and preserved in a certain form, and therefore constituted government information. The Pengshui County Local Maritime Affairs Office had already provided Luo Yuanchang with a copy of Peng Shui Bian Fa (2008) No. 11, the "Notice of the Institutional Establishment Committee of Pengshui Miao and Tujia Autonomous County on Adjusting the Staffing of the County Port and Shipping Administration Institutions," which expressly recorded the institutional nature, staffing, main duties, internal institutions, and other matters of the Pengshui County Port and Shipping Office and the Pengshui County Local Maritime Affairs Office, and Luo Yuanchang was aware of and confirmed this.

With respect to Luo Yuanchang's application for disclosure of the maritime investigation reports and all other accident materials concerning the accidents of vessels such as Xingyun No. 2, under the relevant provisions of the Provisions of the People's Republic of China on the Investigation and Handling of Inland Waterway Traffic Accidents, the investigation and handling of accidents occurring to vessels on inland waterways is a duty of the maritime administration institutions, and the information produced or obtained by them in the course of accident investigation and handling, and recorded and preserved in a certain form, constitutes government information. The Pengshui County Local Maritime Affairs Office, as the maritime administration institution of Pengshui County, bore the duty to place on file, investigate, and handle inland waterway traffic accidents occurring within the administrative region of Pengshui County, and the information produced or obtained by it in the course of accident investigation and handling, and recorded and preserved in a certain form, constituted government information. Luo Yuanchang submitted relevant clues concerning the whole-vessel grounding accident of Xingyun No. 2 at Gaogu Changtanzi, Pengshui, on May 18, 2008, and the sinking accident at Gaogu Meitangou, Pengshui, on September 30, 2008. However, item 2 of the Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006 issued by the Pengshui County Local Maritime Affairs Office, which notified Luo Yuanchang that the government information for which disclosure was applied did not exist, was based only on the self-statement of the Pengshui County Local Maritime Affairs Office, without providing corroborating evidence proving that it had fulfilled its obligation of inquiry, examination, and search. Therefore, the Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006 issued by the Pengshui County Local Maritime Affairs Office was unlawful and should be revoked. During the second-instance proceedings, the Pengshui County Local Maritime Affairs Office voluntarily revoked the Government Information Notification No. (2015) Peng Hai Chu Gao Zi No. 006 it had issued, but Luo Yuanchang persisted in the lawsuit. Under Article 74(2)(2) of the Administrative Litigation Law of the People's Republic of China, the judgment confirmed that the government information notification act of the Pengshui County Local Maritime Affairs Office was unlawful.

(Judges of the effective judgment: Zhang Hongmei, Pu Kaiming, Wang Hong)

Relevant Legal Provisions

Articles 2 and 13 of the Regulations of the People's Republic of China on the Disclosure of Government Information

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