SPC Guiding Case No. 135: The People's Procuratorate of Xuzhou City, Jiangsu Province v. Suzhou Qi'an Crafts Co., Ltd. et al. (Environmental Civil Public Interest Litigation)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

Discussed and adopted by the Judicial Committee of the Supreme People's Court; issued on December 26, 2019.

Keywords

Civil / environmental civil public interest litigation / environmental information / adverse inference

Holding

In environmental civil public interest litigation, where the plaintiff has evidence proving that the defendant generated hazardous waste and carried out the act of disposing of pollutants, and the defendant refuses to provide environmental information such as the circumstances of its disposal of the pollutants, making it impossible to ascertain the whereabouts of the pollutants, the people's court may presume that the fact of environmental pollution asserted by the plaintiff is established.

Basic Facts

In May and June 2015, Suzhou Qi'an Crafts Co., Ltd. ("Qi'an Company") handed over 83 barrels of sulfuric acid waste liquid generated in its industrial production activities to Huang Kefeng for disposal at prices ranging from RMB 1,300 to RMB 3,600 per barrel. Huang Kefeng transported the sulfuric acid waste liquid to a yard he rented in Suzhou, then entrusted He Chuanyi with its disposal at RMB 2,000 per barrel, and He Chuanyi in turn entrusted Wang Keyi with disposal at RMB 1,000 per barrel. Wang Keyi randomly contacted owners or drivers of trucks with out-of-town license plates at the roadside of a logistics park and elsewhere, and had them transport the 83 barrels of sulfuric acid waste liquid directly out of Huang Kefeng's storage site on multiple occasions, asking them to dispose of the waste at will after taking it out of Suzhou; a total of RMB 43,000 was paid in freight. Among them, Wei Yidong transported 15 barrels of sulfuric acid waste liquid from Suzhou to the Pei County Economic Development Zone, dumped 3 barrels on farmland, and abandoned the remaining 12 barrels at a construction site. Apart from those 15 barrels, Wang Keyi was unable to explain the whereabouts of the remaining 68 barrels. In December 2015, the environmental protection department of Pei County discovered the 12 barrels of sulfuric acid waste liquid during an inspection. Appraisal confirmed that the sulfuric acid waste liquid was hazardous waste. In October 2016, Qi'an Company lawfully disposed of the 12 barrels of sulfuric acid waste liquid, paying RMB 116,740.08.

On August 2, 2017, the Pei County People's Procuratorate of Jiangsu Province initiated public prosecution against Qi'an Company, Jiang Xiaoming, Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong before the Xuzhou Railway Transport Court. After the case went through a second-instance trial at the Xuzhou Intermediate People's Court of Jiangsu Province, the final judgment determined that Qi'an Company, Jiang Xiaoming, Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong had committed the crime of polluting the environment.

After discovering the above acts of ecological and environmental damage in the course of performing its duties, the Xuzhou Municipal People's Procuratorate of Jiangsu Province made a public announcement of the relevant circumstances of its intended initiation of this lawsuit in accordance with law, and no organ or relevant organization prescribed by law initiated litigation during the announcement period. In May 2018, the Xuzhou Municipal People's Procuratorate of Jiangsu Province brought this lawsuit before the Xuzhou

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Intermediate People's Court of Jiangsu Province, requesting an order that Qi'an Company, Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong jointly and severally compensate for the ecological and environmental restoration costs caused by the dumping of 3 barrels of sulfuric acid waste liquid and the unlawful disposal of 68 barrels of sulfuric acid waste liquid, and pay the expert assistant consultation fees and announcement fees it paid for this case, and requesting that the five defendants jointly make a public apology in provincial-level media.

Judgment

On September 28, 2018, the Xuzhou Intermediate People's Court of Jiangsu Province rendered Civil Judgment (2018) Su 03 Min Chu No. 256: (1) Suzhou Qi'an Crafts Co., Ltd., Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong shall, within thirty days after the judgment takes effect, jointly and severally compensate RMB 204,415 for the ecological and environmental restoration costs caused by the dumping of 3 barrels of sulfuric acid waste liquid, to be paid into the special fund account for environmental protection public welfare of Xuzhou City; (2) Suzhou Qi'an Crafts Co., Ltd., Huang Kefeng, He Chuanyi, and Wang Keyi shall, within thirty days after the judgment takes effect, jointly and severally compensate RMB 4,630,852 for the ecological and environmental restoration costs caused by the unlawful disposal of 68 barrels of sulfuric acid waste liquid, to be paid into the special fund account for environmental protection public welfare of Xuzhou City; (3) Suzhou Qi'an Crafts Co., Ltd., Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong shall, within thirty days after the judgment takes effect, jointly and severally pay the reasonable expenses of RMB 3,800 paid by the Xuzhou Municipal People's Procuratorate of Jiangsu Province for this case; and (4) Suzhou Qi'an Crafts Co., Ltd., Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong shall, within thirty days after the judgment takes effect, jointly make a public apology in provincial-level media for their unlawful disposal of sulfuric acid waste liquid. After the first-instance judgment was pronounced, none of the parties appealed, and the judgment has become legally effective.

Reasoning

The court in its effective judgment held as follows:

I. Whether the five defendants should bear joint and several compensation liability for the ecological and environmental damage caused by dumping 3 barrels of sulfuric acid waste liquid in the Pei County Economic Development Zone, and how the amount of compensation should be determined

Article 55 of the Law on the Prevention and Control of Environmental Pollution by Solid Waste of the People's Republic of China ("the Solid Waste Law") provides that units generating hazardous waste must dispose of hazardous waste in accordance with relevant state regulations and may not dump or stack it without authorization. Article 57 provides that units engaged in the business of collecting, storing, or disposing of hazardous waste must apply to the environmental protection administrative department of a people's government at or above the county level for a business license, and that it is prohibited to engage in the business of collecting, storing, utilizing, or disposing of hazardous waste without a business license or otherwise than in accordance with the business license. In this case, Qi'an Company, knowing that Huang Kefeng had no hazardous waste business license, still handed the hazardous waste sulfuric acid waste liquid to him for disposal; Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong, knowing that they had no hazardous waste business license, still received Qi'an Company's sulfuric acid waste liquid and unlawfully disposed of it. Qi'an Company and Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong each committed unlawful acts and obtained unlawful profits layer by layer, ultimately causing the hazardous waste to be unlawfully disposed of, and they should bear compensation liability for the resulting ecological and environmental damage. The acts of the five defendants were each a necessary condition for the damage to the ecological environment, constituting joint infringement, and they should bear joint and several liability within the scope of the quantities of hazardous waste in whose unlawful disposal they each participated.

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In this case, the fact that the dumping of 3 barrels of sulfuric acid waste liquid polluted the soil objectively existed, but more than three years had passed since the pollution occurred, and industrial construction had already been carried out at the dumping site, so that the damaged soil could no longer be completely restored. Pursuant to the Recommended Methods for Environmental Damage Appraisal and Assessment (Second Edition) and the former Ministry of Environmental Protection's Explanation on the Applicable Circumstances and Calculation Method of the Virtual Treatment Cost Method ("the Explanation on the Virtual Treatment Cost Method"), the "virtual treatment cost method" may be applied to determine the ecological and environmental restoration costs caused by the dumping of 3 barrels of sulfuric acid waste liquid, the calculation formula being: quantity of pollutants discharged × unit treatment cost of pollutants × sensitivity coefficient of the damaged environment. The opinion submitted by the technical expert entrusted by the public interest litigation plaintiff that the ecological and environmental restoration costs caused by the dumping of 3 barrels of sulfuric acid waste liquid were RMB 204,415 (4.28 × 6,822.92 × 7) was well-founded and sufficient and should be adopted. This item of ecological and environmental damage was caused by the joint unlawful acts of the five defendants Qi'an Company, Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong, and the five defendants should jointly and severally bear the compensation liability of RMB 204,415.

II. Whether the five defendants should bear ecological and environmental damage compensation liability for the remaining 68 barrels of sulfuric acid waste liquid, and how the amount of compensation should be determined

Pursuant to the Solid Waste Law and other laws and regulations, China implements a hazardous waste transfer manifest system; declaring and registering the flow and disposal of hazardous waste is a statutory obligation of the unit generating hazardous waste; truthfully recording the source, whereabouts, and disposal of hazardous waste is a statutory obligation of the unit operating hazardous waste; and units and individuals that generate, collect, store, transport, utilize, or dispose of hazardous waste shall set up hazardous waste identification signs and shall have the statutory obligation to take measures to prevent hazardous waste from polluting the environment. In this case, Qi'an Company failed to perform its declaration and registration obligation for the sulfuric acid waste liquid and failed to lawfully apply for and obtain hazardous waste transfer manifests; the three defendants Huang Kefeng, He Chuanyi, and Wang Keyi unlawfully engaged in hazardous waste business without recording the flow and disposal of the sulfuric acid waste liquid; the four defendants Qi'an Company, Huang Kefeng, He Chuanyi, and Wang Keyi evaded state supervision and unlawfully transferred hazardous waste, could not explain the disposal of the 68 barrels of sulfuric acid waste liquid, and did not take measures to prevent the sulfuric acid waste liquid from polluting the environment; and none of the 68 barrels of sulfuric acid waste liquid had hazardous waste identification signs, while the containers had outlet openings left in them, so that even if they were discarded as a whole after being transported out of Suzhou, there was still a very great risk of liquid leaking out and polluting the environment or even endangering personal and property safety. Therefore, pursuant to Article 13 of the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Environmental Civil Public Interest Litigation Cases, which provides that where the plaintiff requests the defendant to provide environmental information such as the names, discharge methods, discharge concentrations and total quantities of the main pollutants it discharges, the circumstances of discharge exceeding standards, and the construction and operation of pollution prevention and control facilities, and such information is information that the defendant should hold as prescribed by laws, regulations, or rules, or that there is evidence proving the defendant holds, but the defendant refuses to provide it, and the plaintiff asserts facts unfavorable to the defendant, the people's court may presume that the assertion is established, this case should presume that the fact that the remaining 68 barrels of sulfuric acid waste liquid were unlawfully disposed of and polluted the environment is established.

As to the amount of compensation for this item of damage, pursuant to the Explanation on the Virtual Treatment Cost Method, the specific circumstances of this item of damage were unclear, and the ecological and environmental restoration costs produced could also be determined by applying the "virtual treatment

cost method." As stated above, the weight of the 68 barrels of sulfuric acid waste liquid should still be calculated at 1.426 tons per barrel, totaling 96.96 tons; and the unit treatment cost should still be determined as RMB 6,822.92. As to the sensitivity coefficient of the damaged environment, the actual environmental medium and category of environmental functional zone damaged by the unlawful disposal of the 68 barrels of sulfuric acid waste liquid in this case were unclear, and the environmental media that might have been damaged included one or more of soil, surface water, or groundwater. Different environmental media and different categories of environmental functional zones correspond to different sensitivity coefficients, with various possibilities such as 2 to 11. The coefficient of 7 asserted by the public interest litigation plaintiff is in the middle of the range of environmental sensitivity coefficients, corresponding to Class II surface water, Class II soil, and Class III groundwater, and the environmental medium actually polluted by the 3 barrels of sulfuric acid waste liquid established in this case was precisely Class II soil. At the same time, the four defendants also failed to prove that the 68 barrels of sulfuric acid waste liquid actually polluted an environmental medium with a lower sensitivity coefficient. Therefore, the public interest litigation plaintiff's assertion was reasonable, and also reflected a moderate punishment for the unlawful acts of evading state supervision and unlawfully transferring and disposing of hazardous waste, and should be adopted. In summary, the public interest litigation plaintiff's assertion that the ecological and environmental restoration costs caused by the unlawful disposal of 68 barrels of sulfuric acid waste liquid were RMB 4,630,852 (96.96 × 6,822.92 × 7) should be supported. At the same time, if it is subsequently established that the 68 barrels of sulfuric acid waste liquid actually polluted an environmental medium with a higher sensitivity coefficient, and the above restoration costs are insufficient to compensate for the ecological and environmental damage, the organs and relevant organizations prescribed by law may still make a separate claim against the defendants based on the newly discovered facts. This item of ecological and environmental damage was caused by the joint unlawful acts of the four defendants Qi'an Company, Huang Kefeng, He Chuanyi, and Wang Keyi, and the four defendants should jointly and severally bear the compensation liability of RMB 4,630,852.

In summary, the construction of ecological civilization is a fundamental plan bearing on the sustainable development of the Chinese nation; the ecological environment has no substitute, and everyone has the responsibility to protect it. Units and individuals that generate, collect, store, transport, utilize, or dispose of hazardous waste must strictly perform their legal obligations and take effective measures to prevent hazardous waste from polluting the environment. The defendants Qi'an Company, Huang Kefeng, He Chuanyi, Wang Keyi, and Wei Yidong failed to perform their legal obligations, evaded state supervision, unlawfully transferred and disposed of hazardous waste, and allowed hazardous waste to pollute the environment, and shall bear tort liability in accordance with law for the resulting ecological and environmental damage.

Relevant Legal Provisions

Articles 55, 57, and 59 of the Law on the Prevention and Control of Environmental Pollution by Solid Waste of the People's Republic of China.

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