SPC Guiding Case No. 136: The People's Procuratorate of Baishan City, Jilin Province v. the Health and Family Planning Bureau of Jiangyuan District, Baishan City and the Jiangyuan District Hospital of Traditional Chinese Medicine (Environmental Public Interest Litigation)

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

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Keywords

Administrative / environmental administrative public interest litigation / environmental civil public interest litigation / separate filing / joint trial

Holding

When trying an environmental administrative public interest litigation case brought by a people's procuratorate, the people's court may, with reference to the Administrative Litigation Law and its judicial interpretations, handle a corresponding environmental civil public interest litigation brought by the procuratorate concerning the same act of environmental pollution by separately filing the case, jointly trying the cases, and separately rendering judgments.

Basic Facts

When the Jiangyuan District Hospital of Traditional Chinese Medicine of Baishan City built a new comprehensive building, it put the building into use without constructing sewage treatment facilities meeting environmental protection requirements. After discovering this lead, the Baishan Municipal People's Procuratorate of Jilin Province conducted an investigation. The investigation found that the hospital discharged medical sewage through seepage wells and seepage pits. Sampling and testing of the medical sewage it discharged and the soil around the seepage wells showed that chemical oxygen demand, five-day biochemical oxygen demand, suspended solids, and total residual chlorine all exceeded national standards. It was also found that the Baishan Jiangyuan District Health and Family Planning Bureau had verified the hospital's Practicing License for Medical Institutions as qualified even though the hospital had not submitted an environmental impact assessment compliance report, and had failed to promptly stop its unlawful discharge of medical sewage, thereby committing an unlawful act. After completing the pre-litigation procedure for bringing public interest litigation, the procuratorial organ sued in court, requesting: (1) confirmation that the defendant Baishan Jiangyuan District Health and Family Planning Bureau's act on May 18, 2015 of verifying the Practicing License for Medical Institutions of the third party, the Jiangyuan District Hospital of Traditional Chinese Medicine of Baishan City, as qualified was unlawful; (2) an order that the Baishan Jiangyuan District Health and Family Planning Bureau perform its statutory supervision duties, ordering it to require, within a time limit, the rectification of the medical sewage purification and treatment facilities of the hospital; and (3) an order that the hospital immediately cease the unlawful discharge of medical sewage.

Judgment

On July 15, 2016, the Baishan Intermediate People's Court rendered Administrative Judgment (2016) Ji 06 Xing Chu No. 4, confirming that the defendant Baishan Jiangyuan District Health and Family Planning Bureau's administrative act on May 18, 2015 of verifying the Practicing License for Medical Institutions of the

third party, the Jiangyuan District Hospital of Traditional Chinese Medicine of Baishan City, as qualified was unlawful, and ordering the defendant to perform its supervision duties by supervising the third party in completing the rectification of the medical sewage treatment facilities within three months. On the same day, the Baishan Intermediate People's Court rendered Civil Judgment (2016) Ji 06 Min Chu No. 19, ordering the defendant, the Jiangyuan District Hospital of Traditional Chinese Medicine of Baishan City, to immediately cease the unlawful discharge of medical sewage. After the first-instance judgments were pronounced, none of the parties appealed, and the judgments have become legally effective.

Reasoning

The court in its effective judgment held that, pursuant to Articles 5 and 40 of the Regulations on the Administration of Medical Institutions of the State Council, the Baishan Jiangyuan District Health and Family Planning Bureau had the statutory duty of supervision and administration over medical institutions within its jurisdiction. Article 44 of the Measures for the Administration of the Examination and Approval of Medical Institutions in Jilin Province (for Trial Implementation) provides that, when applying for verification, a medical institution shall submit such materials as the verification application, information on changes in practicing registration items, information on acceptance of rectification, and an environmental impact assessment compliance report. The Baishan Jiangyuan District Health and Family Planning Bureau verified the hospital's Practicing License for Medical Institutions as qualified even though the hospital had not submitted an environmental impact assessment compliance report, which violated the above provisions, and the verification act was unlawful. The hospital unlawfully discharged medical sewage, causing a major pollution risk to the surrounding groundwater and soil. As the competent health administrative department, the Baishan Jiangyuan District Health and Family Planning Bureau failed to promptly stop this, and its failure to perform its supervision duties was unlawful. Because the hospital discharged medical sewage through seepage wells and seepage pits, and because the completion of construction and environmental impact assessment acceptance of the sewage treatment facilities required a certain amount of time, the Bureau should continue to perform its supervision duties, urging the hospital's sewage treatment project to be completed in a timely manner, to meet the environmental impact assessment requirements, and to be put into use, so as to satisfy the conditions for verifying the hospital's Practicing License for Medical Institutions under Article 44 of the Measures for the Administration of the Examination and Approval of Medical Institutions in Jilin Province (for Trial Implementation).

Articles 65 and 66 of the Tort Liability Law of the People's Republic of China provide that, where pollution of the environment causes damage, the polluter shall bear tort liability, and that in a dispute arising from environmental pollution, the polluter shall bear the burden of proving the circumstances under which it does not bear liability or bears reduced liability as prescribed by law, and that there is no causal relationship between its conduct and the damage. In this case, based on the public interest litigant's evidence and the relevant facts established, it could be determined that the hospital had not installed sewage treatment equipment meeting environmental protection requirements and had discharged medical sewage through seepage wells and seepage pits. From the test results and testing opinions of the testing institution, the medical sewage it discharged posed a major environmental pollution risk to the nearby groundwater and surrounding soil. Although the hospital argued that its failure to build sewage discharge equipment meeting environmental protection requirements was due to insufficient government investment in public hospitals, that reason could not negate the basic facts that it objectively carried out the act of discharging sewage, that a damaging result of a major environmental pollution risk to the surrounding groundwater and soil was produced, and that there was a causal relationship between the discharge act and the damaging result. Moreover, environmental pollution is irreversible in nature, and therefore a judgment was rendered ordering the immediate cessation of the unlawful discharge of medical sewage.

Relevant Legal Provisions

Article 61 of the Administrative Litigation Law of the People's Republic of China.

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