SPC Guiding Case No. 26: Li Jianxiong v. the Transport Department of Guangdong Province (Government Information Disclosure)

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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 January 26, 2014.

Keywords

Administrative / government information disclosure / online application / overdue reply

Holding

Where a citizen, legal person, or other organization submits a government information disclosure application to an administrative organ through the government public network system, and the network system does not provide an exception, the date on which the system confirms the successful submission of the application shall be deemed the date on which the administrative organ receives the application. The internal processing procedures of the administrative organ for the application cannot constitute a ground for the administrative organ to delay processing; a reply made beyond the prescribed time limit shall be confirmed as unlawful.

Basic Facts

The plaintiff, Li Jianxiong, alleged that on June 1, 2011, he submitted a government information disclosure application to the defendant, the Transport Department of Guangdong Province, through the public network system of the People's Government of Guangdong Province. Under Article 24, paragraph 2 of the Regulations of the People's Republic of China on Government Information Disclosure ("the Government Information Disclosure Regulations"), the defendant should have replied to the plaintiff before the 23rd of that month, but the defendant failed to reply and provide the requested government information within the statutory time limit. He therefore requested the court to confirm that the defendant's failure to reply within the statutory time limit was unlawful.

The defendant, the Transport Department of Guangdong Province, argued that the plaintiff applied for government information disclosure through the public network system of the People's Government of Guangdong Province, i.e., the provincial government's government affairs extranet ("the provincial extranet"), rather than the defendant's internal local area network ("the department intranet"). According to the regulations, the defendant had arranged the back-office handling of the Guangdong provincial government's "online application-based government information disclosure system" on the department intranet. Because the department intranet was physically isolated from the internet and the provincial extranet, data from the internet and the provincial extranet could not directly enter the department intranet for processing, and had to be transferred to the department intranet by way of a network gate. The defendant's staff therefore could not immediately discover the application submitted by the plaintiff in the public network system of the People's Government of Guangdong Province, causing the defendant to fail to accept the application in a timely manner. Under Article 24 of the Government Information Disclosure Regulations and the Notice of the General Office of the State Council on Properly Preparing for the Implementation of the Regulations of the People's Republic of China on Government Information Disclosure, acceptance of an application for government information disclosure is not based on the applicant's submission of the application, but on the administrative organ's receipt of the application. Although the plaintiff claimed to have applied to the defendant on June 1, 2011, the defendant did not receive the application; the date on which the defendant formally received and confirmed acceptance was July 28, and it issued a "receipt of

acceptance" to the plaintiff in accordance with the regulations. On August 4, the defendant delivered to the plaintiff, on the spot, the "Reply on Government Information Disclosure" and the "Government Information Disclosure Reply Letter," only five working days after the date of acceptance, not exceeding the statutory reply time limit. The failure to discover and accept the application submitted by the plaintiff in the government public network system in a timely manner should be regarded as caused by force majeure and objective reasons, and should not be counted within the reply time limit. The defendant therefore requested the court to dismiss the plaintiff's claims in accordance with law.

The court found upon trial: On June 1, 2011, the plaintiff Li Jianxiong submitted a government information disclosure application to the defendant, the Transport Department of Guangdong Province, through the public network system of the People's Government of Guangdong Province, requesting government information such as the passenger transport mileage from Guangzhou Guangyuan Passenger Transport Station to Fogang. The government public network system confirmed the application with application number 11060100011 and notified the plaintiff by text message that the application had been submitted successfully. On July 28, the defendant made an acceptance record confirming the above facts, and on August 4 delivered to the plaintiff the "Reply on Government Information Disclosure" and the "Government Information Disclosure Reply Letter." During the trial, the defendant confirmed that the plaintiff sought the above information based on the needs of life and production, and the plaintiff confirmed that it received the "Reply on Government Information Disclosure" and the "Government Information Disclosure Reply Letter" on August 4.

Judgment

On August 24, 2011, the Yuexiu District People's Court of Guangzhou rendered Administrative Judgment (2011) Yue Fa Xing Chu Zi No. 252: confirming that the defendant, the Transport Department of Guangdong Province, acted unlawfully by failing to reply, within the time limit prescribed by Article 24 of the Government Information Disclosure Regulations, to the plaintiff Li Jianxiong's June 1, 2011 application for disclosure of the government information on the passenger transport mileage from Guangzhou Guangyuan Passenger Transport Station to Fogang.

Reasoning

The effective judgment held: Article 24 of the Government Information Disclosure Regulations provides: "Where an administrative organ receives an application for government information disclosure and can reply on the spot, it shall reply on the spot. Where the administrative organ cannot reply on the spot, it shall reply within 15 working days from the date of receipt of the application; where the reply time limit needs to be extended, the consent of the person in charge of the government information disclosure working body shall be obtained and the applicant shall be notified, and the extended reply time limit shall not exceed 15 working days." In this case, the plaintiff submitted a government information disclosure application to the defendant on June 1, 2011 through the public network system of the People's Government of Guangdong Province, requesting disclosure of the passenger transport mileage from Guangzhou Guangyuan Passenger Transport Station to Fogang. The government public network system generated a corresponding electronic application number and sent the plaintiff a text message confirming the successful submission of the application. The defendant confirmed receipt of the above application and acknowledged that the plaintiff sought the above information based on the needs of life and production, yet did not issue the "Reply on Government Information Disclosure" and the "Government Information Disclosure Reply Letter" to the plaintiff until August 4, 2011, exceeding the reply time limit prescribed above. Given the integration and authority that the Guangdong provincial government's "online application-based government information disclosure system" should possess as a platform for the disclosure of government information, if no exception is provided, an application successfully submitted on that platform shall be deemed to have been received by the relevant administrative organ through the internet. As for the transfer of the application between the extranet and the intranet, and between higher- and lower-level administrative organs, this is an internal management matter

of the administrative organ and cannot constitute a ground for the administrative organ to delay processing. The defendant's argument that because the plaintiff submitted the application through the government public network system, and because its department intranet was physically isolated from the internet and the provincial extranet it could not discover the plaintiff's application in a timely manner, and that July 28, 2011 — the date it discovered the application — should be treated as the date of receipt and therefore the reply time limit had not been exceeded, cannot stand. Therefore, where the plaintiff submitted a government information disclosure application through the government public network system, the date on which the network system confirmed the successful submission of the application shall be deemed the date on which the defendant received the application, and the defendant's reply beyond the time limit shall be confirmed as unlawful.

Relevant Legal Provisions

Article 24 of the Regulations of the People's Republic of China on Government Information Disclosure.

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