

SPC Guiding Case No. 260: [X] Environmental Research Institute, Chaoyang District, Beijing v. Shanxi [X] Aluminum Co., Ltd. (Environmental Pollution Civil Public Interest Litigation)

Dan Young Business Consultancy — www.danyoungcpa.com

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

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Keywords

Civil / environmental pollution civil public interest litigation / mediation agreement / settlement agreement / substantive review / social public interest

Holding

1. With respect to a mediation agreement or settlement agreement reached by the parties to an environmental civil public interest litigation concerning matters such as the restoration of the ecological environment, the people's court shall conduct substantive review; where, upon review, the content of the agreement is sufficient to protect the social public interest, a mediation statement shall be issued in accordance with the law.
2. When reviewing a mediation agreement or settlement agreement, the people's court shall, in light of the specific circumstances of the case, focus on examining whether the agreement specifies matters such as concrete restoration measures, restoration deadlines, restoration costs, acceptance procedures, and supervisory entities, and assess whether the performance of the agreement can achieve the purpose of restoring the damaged ecological environment, restoring the state and functions of the ecological environment, and eliminating the risk of damage to the ecological environment.

Basic Facts

Since 2006, Shanxi [X] Aluminum Co., Ltd. ("Shanxi [X] Aluminum Company") successively stockpiled red mud, an industrial solid waste discharged from extracting alumina from bauxite, in a red mud reservoir in Yuanping City, Shanxi Province. The red mud reservoir had a total land area of 1,840 mu and a total storage capacity of 16.643 million cubic meters. Red mud is strongly alkaline and strongly corrosive; after long-term open-air stockpiling, once the surface dries it produces flying dust during the windy season, causing serious air pollution and posing a relatively great threat to a national key cultural relic protection site only one kilometer away. In November 2014, the Environmental Protection Bureau of Xinzhou City, Shanxi Province, determined that the red mud reservoir of Shanxi [X] Aluminum Company had dust pollution, ordered it to cease the illegal act, and imposed a fine. Because of technological iteration and upgrading, the red mud reservoir in issue was no longer in use and should be closed and sealed in accordance with the law; otherwise, it might trigger geological disasters such as dam failure, posing risks to the lives and property of the people and the surrounding ecological environment.

On August 24, 2016, [X] Environmental Research Institute, Chaoyang District, Beijing ("[X] Environmental Research Institute"), on the ground that the red mud reservoir posed a major risk to the surrounding ecological environment and damaged the social public interest, brought a civil public interest lawsuit before the Xinzhou Intermediate People's Court of Shanxi Province, requesting an order to confirm the hazardousness of the red mud in Shanxi [X] Aluminum Company's red mud reservoir, and to immediately take measures such as sealing the reservoir to eliminate the harm and danger to the surrounding environment.

During the trial, Shanxi [X] Aluminum Company and [X] Environmental Research Institute reached a settlement agreement on their own on January 18, 2017, through negotiation: 1. Shanxi [X] Aluminum Company undertook to take measures in accordance with the law and regulations to ensure that the red mud reservoir conformed to national environmental protection requirements. 2. Shanxi [X] Aluminum Company undertook that the annual expenses related to environmental protection — including enterprise environmental governance, environmental personnel training, pollution prevention and control, investment in and operation, maintenance and material consumption of environmental protection facilities, and comprehensive treatment of the red mud reservoir — would be no less than RMB 50 million (currency same hereinafter). 3. After the agreement took effect, Shanxi [X] Aluminum Company undertook to set aside RMB 3 million and, within two months, establish a special account as the special environmental governance fund for the red mud reservoir, to guarantee the environmental governance of the red mud reservoir. The governance of the red mud reservoir was not limited to this special environmental governance fund. 4. Shanxi [X] Aluminum Company voluntarily accepted the supervision of [X] Environmental Research Institute, with a supervision period of three years from the day after the agreement took effect. 5. Shanxi [X] Aluminum Company bore [X] Environmental Research Institute's attorney fees in this case. 6. The litigation costs were borne by Shanxi [X] Aluminum Company.

After review, the Xinzhou Intermediate People's Court held that, comprehensively considering the scale of the red mud reservoir in issue, the harmful consequences, the existing dust-control measures, and the measures proposed in the settlement agreement, failing to seal the reservoir could not fundamentally cure the pollution problem of the red mud reservoir, could not achieve the effect of restoring the ecological environment, and was insufficient to protect the social public interest; therefore, the settlement agreement could not be confirmed in accordance with the law, and no mediation statement was issued. Given that the reservoir-sealing project was a worldwide technical challenge and there had been no prior domestic experience in sealing a red mud reservoir of the same scale, the Xinzhou Intermediate People's Court organized technical experts to conduct an on-site survey of the red mud reservoir in issue, fully demonstrated whether it could be sealed, and guided the two parties to renegotiate the restoration measures, restoration deadlines, restoration costs, acceptance procedures, and supervisory entities with the aim of eliminating the ecological environment risk.

On November 16, 2018, under the auspices of the people's court, Shanxi [X] Aluminum Company and [X] Environmental Research Institute reached a mediation agreement: 1. Shanxi [X] Aluminum Company shall, in accordance with the requirements of the state organs such as the work safety supervision and administration departments, complete the sealing of the red mud reservoir within five years after the mediation agreement takes effect, and shall report the performance of the mediation agreement to [X] Environmental Research Institute in writing at least once a year and report to the people's court. 2. During the sealing period, Shanxi [X] Aluminum Company shall take environmental pollution prevention measures in accordance with regulations, continue to take dust-suppression measures such as sprinkling water and covering; strictly implement the ecological and environmental protection requirements in the feasibility study reports and design plans approved, recognized, or filed by the relevant administrative departments, and prevent pollution of groundwater, soil, and air; and engage a third-party professional institution each year to test the environmental quality (groundwater and air) around the red mud reservoir no fewer than two times and issue a testing report. 3. Shanxi [X] Aluminum Company shall raise all funds required for the sealing project on its own, with the estimated project cost being RMB 150 million. 4. Where natural, social, technical, third-party, or other causes prevent the sealing, Shanxi [X] Aluminum Company shall promptly notify the people's court and [X] Environmental Research Institute in writing, and shall continue and complete the sealing after the causes are eliminated, with the construction period extended accordingly; where Shanxi [X] Aluminum Company expressly states that it will not seal the reservoir or seals it beyond the deadline, [X] Environmental Research Institute may apply to the people's court to deduct or freeze Shanxi [X] Aluminum Company's remaining project funds (capped at RMB 150 million in total), and may apply to the people's court

to commission a qualified professional institution through tendering to complete the sealing, with the required costs paid directly from the deducted or frozen project funds. 5. After the sealing project is completed, Shanxi [X] Aluminum Company shall organize an acceptance team composed of professional technical experts and representatives of design, construction, and monitoring (survey) entities to conduct the completed-project environmental protection acceptance; only upon passing acceptance shall the environmental protection effect of the sealing measures be deemed to have achieved the expected target.

On November 27, 2018, the Xinzhou Intermediate People's Court publicly announced the above mediation agreement for a period of thirty days, and no objection was received during the announcement period.

Judgment

The Xinzhou Intermediate People's Court of Shanxi Province reviewed and confirmed the mediation agreement reached between Shanxi [X] Aluminum Co., Ltd. and [X] Environmental Research Institute, Chaoyang District, Beijing on November 16, 2018, and issued the civil mediation statement (2016) Jin 09 Min Chu No. 35 on December 28, 2018.

Reasoning

Paragraph 2 of Article 25 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 (Fa Shi [2015] No. 1, hereinafter the "Interpretation") provides: "...Where the people's court, upon review, considers that the content of the mediation agreement or settlement agreement does not harm the social public interest, it shall issue a mediation statement..." Accordingly, environmental civil public interest litigation permits mediation or self-settlement, but the people's court must conduct substantive review of the content of the mediation agreement or settlement agreement and confirm that the parties can exercise their litigation rights in accordance with the law, so as to ensure that the content and performance of the agreement are sufficient to protect the social public interest.

In this case, [X] Environmental Research Institute brought an environmental civil public interest lawsuit against Shanxi [X] Aluminum Company and successively reached a settlement agreement and a mediation agreement during the litigation. In this regard, the people's court should examine whether the content of the agreement reached by the two parties concerning the restoration of the ecological environment was sufficient to protect the social public interest, and then decide whether to issue a mediation statement. The review should focus on whether the agreement specified concrete restoration measures, restoration deadlines, restoration costs, acceptance procedures, and supervisory entities, and, in combination with factors such as the scope and degree of the ecological environment damage and the difficulty of restoring the ecological environment, assess whether the performance of the agreement could achieve the purpose of restoring the damaged ecological environment, restoring the state and functions of the ecological environment, and eliminating the risk of damage to the ecological environment.

When the parties reached the settlement agreement on January 18, 2017, the amount of red mud stockpiled in the red mud reservoir had already reached the designed stockpiling elevation, and the environmental problem could not be resolved without sealing the reservoir. However, the settlement agreement not only failed to require Shanxi [X] Aluminum Company to seal the red mud reservoir, but also failed to specify concrete restoration measures or restoration deadlines; it merely required Shanxi [X] Aluminum Company to make payment commitments, and did not specify the amount of funds to be used for restoring the environment around the red mud reservoir. Therefore, the settlement agreement reached by the two parties was insufficient to restore the damaged ecological environment, could not restore the state and functions of the ecological environment, and could not effectively eliminate the risk of damage to the ecological environment, and did not satisfy the requirement in Article 25 of the Interpretation that the content of a settlement agreement must "not harm the social public interest." Therefore, the people's court did not issue a mediation statement.

On November 16, 2018, under the auspices of the people's court, the parties reached a mediation agreement, stipulating the raising of RMB 150 million in project funds to complete the sealing of the red mud reservoir within five years, so as to fundamentally resolve the environmental problem of the red mud reservoir. Judging from the content of the mediation agreement, the two parties made detailed stipulations on the restoration deadline, restoration costs, restoration measures, alternative plans, supervisory entities, supervisory methods, and acceptance departments for the red mud reservoir. To ensure that the content of the agreement was reasonable and feasible, the people's court publicly announced the above mediation agreement in accordance with the law, and no objection was received during the announcement period. In summary, the people's court found that the mediation agreement satisfied the requirement in Article 25 of the Interpretation that the content of a mediation agreement must "not harm the social public interest," and issued a mediation statement in accordance with the law.

After the case was closed, the people's court proactively communicated with the relevant administrative departments, clarified the ecological restoration and governance standards and technical specifications for the reservoir area, and urged Shanxi [X] Aluminum Company to formulate a sealing plan and advance it on schedule. The total investment in the sealing project was more than RMB 130 million, mainly including 1.97 million cubic meters of red mud treatment and ash-slag slope grading, the construction of four new drainage systems, 380,000 cubic meters of soil covering, and 855,000 square meters of impermeable membrane laying and greening. To ensure the timely completion of the sealing project, the people's court conducted regular on-site follow-up visits and continuously tracked the restoration progress. After five years of governance, the sealing project was completed in November 2023 and passed the environmental protection acceptance, and in December 2023 it passed the safety acceptance of the Shanxi Provincial Emergency Management Department, achieving the effect of restoring the ecological environment and eliminating the risk of damage. By this point, the content of the civil mediation statement had been fully performed.

In addition, in the process of urging Shanxi [X] Aluminum Company to perform the obligations determined in the civil mediation statement, the people's court also guided the company to adjust and optimize its industrial layout, build a green development industrial cluster, and develop clean energy projects such as solar energy, wind energy, and energy storage using the land resources after the reservoir was sealed, achieving the organic unity of ecological, economic, and social benefits.

Relevant Legal Provisions

Article 1234 of the Civil Code of the People's Republic of China.

Article 25 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 (Fa Shi [2015] No. 1, 2020 Amendment).

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