SPC Guiding Case No. 38: Tian Yong v. University of Science and Technology Beijing (Refusal to Issue Graduation Certificate and Degree Certificate)

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

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Keywords

Administrative litigation / issuance of certificates / higher education institution / scope of case acceptance / due process

Holding

1. Where a higher education institution refuses to issue a diploma or degree certificate to an educated person for violating school rules or discipline, and the educated person refuses to accept this, he or she may bring an administrative lawsuit in accordance with law.

2. Where a higher education institution, based on school rules or discipline that violate state laws, administrative regulations, or rules, makes a decision such as expelling an educated person from school, the people's court shall not support it.

3. When a higher education institution makes a decision affecting the basic rights of an educated person who violated school rules or discipline, it shall allow the person to state a defense and promptly serve the decision after it is made; otherwise it shall be deemed to have violated statutory procedure.

Basic Facts

The plaintiff, Tian Yong, was admitted to the University of Science and Technology Beijing in September 1994 and obtained undergraduate student status. On February 29, 1996, during the make-up examination for the electromagnetics course, Tian Yong carried a slip of paper with electromagnetics formulas written on it. During the examination, when he went to the toilet, the slip of paper fell out and was discovered by the invigilating teacher. Although the invigilating teacher did not discover that he had peeked at the slip of paper, the teacher still, in accordance with examination room discipline, immediately stopped Tian Yong's examination. The defendant, the University of Science and Technology Beijing, based on the spirit of the instructions of the former State Education Commission on strictly enforcing examination room discipline, formulated in 1994 the Urgent Notice on Strict Examination Administration (Xiao Fa [94] No. 068) (hereinafter "Notice No. 068"). That notice provided that all students who cheat in examinations shall be dealt with by expulsion from school and their student status cancelled. Based on this, the defendant, on March 5, 1996, determined that Tian Yong's conduct constituted cheating and made a decision to expel him from school. On April 10 of the same year, the defendant filled out a notice of change of student status, but the expulsion decision and the notice of change of student status were not directly announced or served on Tian Yong, nor were the expulsion procedures handled for Tian Yong; Tian Yong continued to participate in normal study and activities organized by the school in his capacity as a student of the university. In September 1996, the defendant reissued a student card for Tian Yong; thereafter, each academic year it collected education fees from Tian Yong, registered him, issued undergraduate student subsidies and allowances, arranged for Tian Yong to participate in the undergraduate graduation internship and graduation design, and his thesis supervisor received the graduation design completion fee issued by the school. Tian Yong also took examinations in the name of a student of the university and successively obtained certificates

of passing the College English Test Band 4 and the computer application level test BASIC language. The defendant had no dispute over the fact that the plaintiff achieved passing results in all courses during his four years of study at the university, passed the graduation internship, graduation design, and thesis defense, obtained an excellent graduation thesis, and ranked ninth in his class in overall graduation results.

In June 1998, when Tian Yong's department submitted to the defendant the form for conferring bachelor's degrees on the class to which Tian Yong belonged, the defendant's relevant department, on the ground that Tian Yong had been dealt with by expulsion and no longer had student status at the University of Science and Technology Beijing, refused to issue him a graduation certificate and consequently did not report Tian Yong's graduation dispatch qualification form to the education administration department. Tian Yong's department believed that the plaintiff met the conditions for university graduation and conferral of a bachelor's degree, but because at the time the plaintiff was negotiating with the school over the graduation issue, it temporarily did not sign the degree conferral form, and would sign after the student status issue was resolved. The defendant therefore did not include the plaintiff in the list of persons qualified for a bachelor's degree for review by the school's Academic Degree Evaluation Committee. Because some teachers of the defendant appealed to the former State Education Commission over Tian Yong's matter, the Student Affairs Department of the State Education Commission wrote to the defendant on May 18, 1998, stating that the defendant's handling of Tian Yong's violation of examination room discipline was too severe and suggesting a re-examination. On June 10 of the same year, after re-examination, the defendant still adhered to its original conclusion. Tian Yong believed that he met the statutory conditions for a university graduate and that the refusal of the University of Science and Technology Beijing to issue him a graduation certificate and degree certificate was unlawful, so he brought an administrative lawsuit before the Haidian District People's Court of Beijing.

Judgment

On February 14, 1999, the Haidian District People's Court of Beijing rendered administrative judgment (1998) Hai Xing Chu Zi No. 00142: (1) the University of Science and Technology Beijing shall issue a university undergraduate graduation certificate to Tian Yong within 30 days from the effective date of this judgment; (2) the University of Science and Technology Beijing shall, within 60 days from the effective date of this judgment, organize the relevant departments, departments, and Academic Degree Evaluation Committee of the school to review Tian Yong's bachelor's degree qualification; (3) the University of Science and Technology Beijing shall, within 30 days after this judgment takes effect, perform its duty of reporting to the local education administration department the relevant procedures for Tian Yong's graduation dispatch; (4) Tian Yong's other litigation requests were dismissed. The University of Science and Technology Beijing appealed, and the Beijing No. 1 Intermediate People's Court, on April 26, 1999, rendered administrative judgment (1999) Yi Zhong Xing Zhong Zi No. 73: dismissing the appeal and affirming the original judgment.

Reasoning

The court's effective judgment held that: in accordance with the provisions of China's laws and regulations, higher education institutions have the power to administer student status, rewards, and punishments over educated persons, and have the duty to issue diplomas and degree certificates to educated persons on behalf of the state. The relationship between higher education institutions and educated persons is one of educational administration; where an educated person refuses to accept an administrative act of a higher education institution that affects his or her basic rights, he or she has the right to bring an administrative lawsuit, and the higher education institution is a proper defendant in the administrative lawsuit.

Higher education institutions lawfully have corresponding autonomy in education, have the right to formulate school discipline and rules, and have the right to conduct teaching administration and discipline violations of students in school; however, the school discipline and rules they formulate, and the teaching administration and discipline punishment carried out on that basis, must conform to the provisions of laws, regulations, and rules, and must respect and protect the lawful rights and interests of the parties concerned. In this case, the

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plaintiff's conduct of carrying a slip of paper with him during the make-up examination was a violation of examination room discipline, and the defendant could handle it in accordance with the relevant laws, regulations, rules, and the relevant provisions of the school; however, the Notice No. 068 formulated by the school, on which the defendant based its expulsion decision against the plaintiff, conflicted with the statutory expulsion conditions provided in Article 29 of the Provisions on the Administration of Students of Regular Higher Education Institutions, so the expulsion decision made by the defendant was unlawful.

The expulsion decision involved the plaintiff's right to education; in order to fully protect the rights and interests of the parties, and proceeding from the principle of due process, the defendant should have served and announced the decision to the party and allowed the party to state a defense. However, the defendant neither handled the matter in accordance with this principle, nor actually handled the procedures such as cancellation of student status, transfer of household registration, and transfer of archives for the plaintiff. The defendant's factual conduct of reissuing a student card for the plaintiff and registering him in September 1996 should be deemed as the defendant having changed its expulsion decision against the plaintiff and restored the plaintiff's student status. The defendant further arranged for the plaintiff to complete four years of study, and to participate in assessments, internships, and graduation design and to pass the thesis defense. Although the above series of acts were specifically implemented by some teachers of the defendant and its affiliated departments, because they were all acts performed in the course of duty, the defendant should bear the legal consequences arising from the above acts.

The state implements a diploma system. The defendant, as a higher education institution approved by the state, should issue a corresponding academic certificate to an educated person who has obtained student status at a regular higher education institution, received regular education, and reached a certain level and requirements upon completion of study, so as to recognize that the student has the corresponding educational attainment. The plaintiff met the above conditions for a graduate of a higher education institution, and the defendant should, in accordance with Item 5 of Paragraph 1 of Article 28 of the Education Law of the People's Republic of China and Article 35 of the Provisions on the Administration of Students of Regular Higher Education Institutions, issue the plaintiff a university undergraduate graduation certificate.

The state implements an academic degree system, and degree certificates are the measure of an individual's academic level. The defendant, as a state-authorized institution for conferring bachelor's degrees of higher education institutions, should, in accordance with statutory procedure, confer corresponding degrees and issue degree certificates on persons who have reached a certain academic level or professional technical level. In accordance with the statutory procedural requirements for issuing bachelor's degree certificates provided in Articles 4, 5, and Item 3 of Article 18 of the Interim Measures for the Implementation of the Regulations of the People's Republic of China on Academic Degrees, the defendant should first organize the relevant departments to review the plaintiff's graduation results, graduation appraisal, and other materials, and determine whether the plaintiff has relatively well mastered the basic theories, specialized knowledge, and basic skills of the relevant discipline, and whether he has the preliminary ability to engage in scientific research work or undertake specialized technical work; then decide whether to nominate him to the Academic Degree Evaluation Committee for inclusion in the list of bachelor's degree recipients, and the Academic Degree Evaluation Committee may review and pass the list before the defendant confers a bachelor's degree on the plaintiff.

Relevant Legal Provisions

Article 25 of the Administrative Litigation Law of the People's Republic of China.

Articles 21 and 22 of the Education Law of the People's Republic of China.

Article 8 of the Regulations of the People's Republic of China on Academic Degrees.

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