SPC Guiding Case No. 75: China Biodiversity Conservation and Green Development Foundation v. Ningxia Ruitai Technology Co., Ltd. (Environmental Pollution 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 28, 2016.

Keywords

Civil / public interest litigation for environmental pollution / social organization specifically engaged in environmental protection public interest activities

Holding

1. Where a social organization's charter does not expressly state the safeguarding of environmental public interests, but its work content falls within the protection of environmental elements and ecosystems, it should be found to satisfy the provision of Article 4 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 (the "Interpretation") that "the purpose and main business scope determined in the social organization's charter are the safeguarding of social public interests."

2. The "environmental protection public interest activities" provided for in Article 4 of the Interpretation include both activities that directly improve the ecological environment and activities related to environmental protection that are conducive to improving the environmental governance system, enhancing environmental governance capacity, and promoting the formation of broad public consensus on environmental protection throughout society.

3. Where the matters sued upon by a social organization have a corresponding relationship with its purpose and business scope, or have a certain connection with the environmental elements and ecosystems it protects, it should be found to satisfy the provision of Article 4 of the Interpretation that such matters "are related to its purpose and business scope."

Basic Facts

On August 13, 2015, the China Environmental Protection and Green Development Foundation ("Green Development Foundation") brought a lawsuit before the Intermediate People's Court of Zhongwei City, Ningxia Hui Autonomous Region, alleging: Ningxia Ruitai Technology Co., Ltd. ("Ruitai Company") had, during its production process, directly discharged wastewater exceeding the standard into evaporation ponds in violation of regulations, causing serious pollution to the Tengger Desert, and the rectification had still not been completed as of the time of filing the lawsuit. It requested the court to order Ruitai Company: (1) to cease its illegal acts of polluting the environment; (2) to eliminate the danger caused by the environmental pollution; (3) to restore the ecological environment or establish a special fund for desert environmental restoration and entrust a qualified third party to carry out the restoration; (4) with respect to the second and third claims, to have the court organize the plaintiff, technical experts, legal experts, deputies to the people's congress, and members of the CPPCC to conduct joint acceptance inspection; (5) to compensate for the loss of ecological functions before the environmental restoration; and (6) to publicly apologize in national media, among other requests.

The Green Development Foundation submitted to the court its foundation legal-person registration certificate, showing that it was a foundation legal person registered with the Ministry of Civil Affairs of the

People's Republic of China. The annual inspection certification materials for 2010 through 2014 submitted by the Green Development Foundation showed that it had passed annual inspections for the five years before filing this public interest lawsuit. The Green Development Foundation also submitted a declaration of no violation record stating that it had not received administrative or criminal penalties for engaging in business activities in violation of laws or regulations within the past five years. In addition, the Green Development Foundation's charter provided that its purpose was to "broadly mobilize the whole society to care about and support the cause of biodiversity conservation and green development, protect national strategic resources, promote ecological civilization construction and the harmony between humanity and nature, and build a beautiful homeland for humanity." During the first-instance, second-instance, and retrial proceedings, the Green Development Foundation submitted relevant evidentiary materials showing that it had, since its establishment in 1985, continuously engaged in activities including holding environmental protection seminars, organizing ecological surveys, carrying out environmental protection publicity and education, and bringing environmental civil public interest lawsuits.

Judgment

On August 19, 2015, the Intermediate People's Court of Zhongwei City, Ningxia Hui Autonomous Region rendered the civil ruling (2015) Wei Min Gong Li Zi No. 6, ruling not to accept the Green Development Foundation's lawsuit on the ground that the Green Development Foundation could not be determined to be a social organization "specifically engaged in environmental protection public interest activities" under Article 58 of the Environmental Protection Law of the People's Republic of China. Dissatisfied, the Green Development Foundation appealed to the Higher People's Court of Ningxia Hui Autonomous Region. On November 6, 2015, that court rendered the civil ruling (2015) Ning Min Gong Li Zhong Zi No. 6, dismissing the appeal and affirming the original ruling. The Green Development Foundation then applied to the Supreme People's Court for retrial. On January 22, 2016, the Supreme People's Court rendered the civil ruling (2015) Min Shen Zi No. 3377, ruling to retry the case; and on January 28, 2016 rendered the civil ruling (2016) Zui Gao Fa Min Zai No. 47, ruling that the case be accepted and docketed by the Intermediate People's Court of Zhongwei City, Ningxia Hui Autonomous Region.

Reasoning

The effective judgment held: This case was a public interest lawsuit for environmental pollution brought by a social organization. The focus of the dispute was whether the Green Development Foundation should be determined to be a social organization specifically engaged in environmental protection public interest activities.

Article 55 of the Civil Procedure Law of the People's Republic of China establishes the system of environmental civil public interest litigation, clarifying that organs prescribed by law and relevant organizations may bring environmental public interest lawsuits. Article 58 of the Environmental Protection Law provides: "With respect to acts that pollute the environment, damage the ecology, and harm social public interests, a social organization that meets the following conditions may bring a lawsuit before the people's court: (1) it has been registered with the civil affairs department of the people's government at or above the level of a city divided into districts in accordance with the law; and (2) it has been specifically engaged in environmental protection public interest activities for five consecutive years or more and has no violation record. Where a social organization that meets the provisions of the preceding paragraph brings a lawsuit before the people's court, the people's court shall accept it in accordance with the law." Article 4 of the Interpretation further clarifies the standard for determining whether a social organization is "specifically engaged in environmental protection public interest activities," namely: "Where the purpose and main business scope determined in a social organization's charter are the safeguarding of social public interests, and the social organization engages in environmental protection public interest activities, it may be determined to be a social organization 'specifically engaged in environmental protection public interest activities' under Article 58 of the Environmental Protection Law. The social public interests involved in the

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lawsuit brought by the social organization should be related to its purpose and business scope." As to whether the Green Development Foundation in this case could, as a social organization "specifically engaged in environmental protection public interest activities," bring this lawsuit, the review should focus on three aspects: whether its purpose and business scope included safeguarding environmental public interests, whether it actually engaged in environmental protection public interest activities, and whether the environmental public interests it safeguarded were related to its purpose and business scope.

I. On whether the purpose and business scope stipulated in the Green Development Foundation's charter included safeguarding environmental public interests. The common interests enjoyed by the public in surviving and developing in a healthy, comfortable, and beautiful environment take diverse forms. As to whether a social organization's purpose and business scope include safeguarding environmental public interests, the judgment should be made based on their substance rather than merely their literal expression. Even if a social organization's charter does not expressly state the safeguarding of environmental public interests, if its work content falls within the scope of protecting the various natural and artificially modified natural factors affecting human survival and development, including the protection of environmental elements such as the atmosphere, water, oceans, land, mineral deposits, forests, grasslands, wetlands, wildlife, natural relics, cultural relics, nature reserves, scenic areas, cities, and villages and their ecosystems, it may all be determined that its purpose and business scope include safeguarding environmental public interests.

The United Nations Convention on Biological Diversity, signed by China in 1992, points out that biological diversity refers to the diversity among terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part, including diversity within species, between species, and of ecosystems. Article 30 of the Environmental Protection Law provides: "In developing and utilizing natural resources, they shall be developed rationally, biological diversity shall be protected, ecological security shall be safeguarded, and relevant plans for ecological protection and restoration and governance shall be formulated and implemented in accordance with the law. When introducing alien species and researching, developing, and utilizing biotechnology, measures shall be taken to prevent damage to biological diversity." It can be seen that the protection of biological diversity is an important part of environmental protection and also an important component of safeguarding environmental public interests.

The Green Development Foundation's charter clearly provides that its purpose is to "broadly mobilize the whole society to care about and support the cause of biodiversity conservation and green development, protect national strategic resources, promote ecological civilization construction and the harmony between humanity and nature, and build a beautiful homeland for humanity," which satisfies the requirements of the United Nations Convention on Biological Diversity and the Environmental Protection Law for the protection of biological diversity. At the same time, the contents of "promoting ecological civilization construction," "the harmony between humanity and nature," and "building a beautiful homeland for humanity" accord with the concept of green development and are closely related to environmental protection, falling within the scope of safeguarding environmental public interests. Therefore, it should be determined that the Green Development Foundation's purpose and business scope included the safeguarding of environmental public interests.

II. On whether the Green Development Foundation actually engaged in environmental protection public interest activities. Environmental protection public interest activities include not only acts that directly improve the ecological environment, such as afforestation, protection of endangered species, energy conservation and emission reduction, and environmental restoration, but also activities related to environmental protection such as publicity and education, research and training, academic exchange, legal aid, and public interest litigation that are conducive to improving the environmental governance system, enhancing environmental governance capacity, and promoting the formation of broad public consensus on environmental protection throughout society. The relevant evidentiary materials submitted by the Green Development Foundation during the first-instance, second-instance, and retrial proceedings, such as its

history, photos of public interest activities, and notices of acceptance of environmental public interest lawsuits, although not cross-examined, were sufficient at the case-filing review stage to show that the Green Development Foundation had, since its establishment in 1985, long actually engaged in environmental protection activities including holding environmental protection seminars, organizing ecological surveys, carrying out environmental protection publicity and education, and bringing environmental civil public interest lawsuits, satisfying the provisions of the Environmental Protection Law and the Interpretation. At the same time, the above evidence also proved that the Green Development Foundation had engaged in environmental protection public interest activities for more than five years, satisfying the requirement of Article 58 of the Environmental Protection Law that a social organization engage in environmental protection public interest activities for five years or more.

III. On whether the social public interests involved in this case were related to the Green Development Foundation's purpose and business scope. According to the provisions of Article 4 of the Interpretation, the environmental public interests involved in a public interest lawsuit brought by a social organization should have a certain relationship with the social organization's purpose and business scope. This provision aims to ensure that the matters of environmental public interest protection sued upon by a social organization correspond to or relate to its purpose and business scope, so as to ensure that the social organization has the corresponding litigation capacity. Therefore, even if the matters sued upon by a social organization do not have a corresponding relationship with its purpose and business scope, if they have a certain connection with the environmental elements or ecosystems it protects, its subject qualification should also be confirmed based on the relevance standard. The environmental public interest lawsuit in this case was brought against pollution of the Tengger Desert. The complex and fragile desert ecosystem formed by the interaction between desert biological communities and their environment needs to be treasured, utilized, and carefully cared for even more by humanity. The Green Development Foundation sued alleging that Ruitai Company discharged wastewater exceeding the standard into evaporation ponds, seriously damaging the already fragile ecosystem of the Tengger Desert, and the safeguarding of the environmental public interests involved fell within the Green Development Foundation's purpose and business scope.

In addition, the foundation legal-person registration certificate submitted by the Green Development Foundation showed that it was a foundation legal person registered with the Ministry of Civil Affairs of the People's Republic of China. The annual inspection certification materials for 2010 through 2014 submitted by the Green Development Foundation showed that it had passed annual inspections for the five years before filing this public interest lawsuit. The Green Development Foundation also submitted, in accordance with Article 5 of the Interpretation, a declaration of no violation record stating that it had not received administrative or criminal penalties for engaging in business activities in violation of laws or regulations within the past five years. Accordingly, the Green Development Foundation also satisfied the other requirements of Article 58 of the Environmental Protection Law and Articles 2, 3, and 5 of the Interpretation for social organizations bringing environmental public interest lawsuits, and had the subject qualification to bring an environmental civil public interest lawsuit.

Relevant Legal Provisions

Article 58 of the Environmental Protection Law of the People's Republic of China.

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