SPC Guiding Case No. 88: Zhang Daowen, Tao Ren et al. v. the People's Government of Jianyang City, Sichuan Province (Infringement of Passenger Tricycle Operating Rights)

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

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Keywords

Administrative / administrative license / time limit / duty of notification / administrative procedure / confirmation / judgment of unlawfulness

Holding

1. An administrative license has a statutory time limit. When granting an administrative license, the administrative organ shall clearly notify the time limit of the license, and the administrative counterpart also has the right to know the time limit of the license.

2. The people's court shall not support an administrative counterpart's claim that an administrative license has no time limit merely because the administrative organ failed to notify the time limit.

3. Where an administrative organ, when granting an administrative license, failed to notify the time limit, and afterwards terminates the administrative counterpart's rights and interests under the administrative license on the ground that the time limit has expired, this constitutes a violation of administrative procedure, and the people's court shall, in accordance with the law, render a judgment revoking the challenged administrative act. However, if revoking the challenged administrative act would cause obvious adverse effects to the public interest and the order of administrative management, the people's court shall render a judgment confirming that the challenged administrative act is unlawful.

Basic Facts

On December 12, 1994, the People's Government of Jianyang City, Sichuan Province (the "Jianyang Municipal Government"), by way of a notice, implemented quota management of passenger human-powered tricycles within the urban area. In August 1996, the Jianyang Municipal Government collected a paid use fee of 3,500 yuan from each operator of the human-powered passenger tricycles (240 vehicles) converted from human-powered passenger elderly vehicles. In November 1996, the Jianyang Municipal Government collected a paid use fee of 2,000 yuan from each operator of the original 161 passenger human-powered tricycles. Beginning in November 1996, the Jianyang Municipal Government began implementing paid use of operating rights, and relevant departments also collected relevant fees from the quota-limited 401 passenger human-powered tricycles. On July 15 and July 28, 1999, in response to passenger human-powered tricycles whose paid use period had expired for two years, the Jianyang Municipal Government issued the Announcement on Rectifying the Operating Order of Small Vehicles in the Urban Area (the "Announcement") and the Supplementary Announcement on Rectifying the Operating Order of Small Vehicles in the Urban Area (the "Supplementary Announcement"). Among them, the Announcement required that "operators of passenger human-powered tricycles who already hold lawful licenses must re-register at the office of the Municipal Traffic Police Brigade from July 19 to July 20, 1999," and the Supplementary Announcement required that "those who, after examination, obtain the operating right shall pay a paid use fee for the operating right at the standard of 8,000 yuan per vehicle (7,200 yuan per vehicle for those meeting the provisions of Article 6 of the Announcement)." Zhang Daowen, Tao Ren, and 182 other operators of

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passenger human-powered tricycles believed that Article 6 of the Announcement and Article 2 of the Supplementary Announcement made by the Jianyang Municipal Government formed duplicate charges and infringed upon their lawful operating rights, and filed an administrative lawsuit with the People's Court of Jianyang City, Sichuan Province, requesting that the above Announcement and Supplementary Announcement be revoked.

Judgment

On November 9, 1999, the People's Court of Jianyang City, Sichuan Province, pursuant to Item (1) of Article 54 of the Administrative Litigation Law of the People's Republic of China, in Judgment (1999) Jianyang Xing Chu Zi No. 36, upheld the administrative acts taken by the municipal government on July 15, 1999 and July 28, 1999. Zhang Daowen, Tao Ren, and others were dissatisfied and appealed. On March 2, 2000, the Intermediate People's Court of Ziyang Prefecture, Sichuan Province, in Administrative Judgment (2000) Zi Xing Zhong Zi No. 6, dismissed the appeal and affirmed the original judgment. On June 13, 2001, the Higher People's Court of Sichuan Province, in Administrative Ruling (2001) Chuan Xing Jian Zi No. 1, directed the Intermediate People's Court of Ziyang City, Sichuan Province (formerly Ziyang Prefecture), to conduct a retrial. On November 3, 2001, the Intermediate People's Court of Ziyang City, Sichuan Province, in Judgment (2001) Zi Xing Zai Zhong Zi No. 1, revoked the original first-instance and second-instance judgments and dismissed the claims of the original plaintiffs. Zhang Daowen, Tao Ren, and others were dissatisfied and filed a petition with the Higher People's Court of Sichuan Province. On July 11, 2002, the Higher People's Court of Sichuan Province issued Notice of Dismissal of Retrial Application (2002) Chuan Xing Jian Zi No. 4. Zhang Daowen, Tao Ren, and others were dissatisfied and applied to the Supreme People's Court for retrial. On March 23, 2016, the Supreme People's Court ruled to bring the case up for trial. On May 3, 2017, the Supreme People's Court rendered Administrative Judgment (2016) Zui Gao Fa Xing Zai No. 81: (1) Judgment (2001) Zi Xing Zai Zhong Zi No. 1 of the Intermediate People's Court of Ziyang City, Sichuan Province, was revoked; and (2) the Announcement on Rectifying the Operating Order of Small Vehicles in the Urban Area and the Supplementary Announcement on Rectifying the Operating Order of Small Vehicles in the Urban Area made by the People's Government of Jianyang City, Sichuan Province, were confirmed to be unlawful.

Reasoning

The Supreme People's Court held that this case involved the following three main issues:

On the legality of the challenged administrative act. In terms of the application of law, Article 4 of the Regulations of Sichuan Province on Road Transport Administration provides that "the transport administrative authorities at all levels are responsible for the adjustment of the types and the allocation of the quantities of commercial vehicles within their respective administrative areas," and Article 24 provides that "with the approval of the people's government at or above the county level, the operating right for passenger transport may be used on a paid basis." Article 8 of the Provisions of the Sichuan Provincial Transport Department on the Administration of Small Vehicle Passenger Transport (Chuan Jiao Yun [1994] No. 359) provides: "When the transport administration departments of the various cities, prefectures, and prefectures implement quota management of small passenger vehicles, they may, with the approval of the local government, adopt the method of paid use of operating permits, but the period of paid use may not exceed two years at a time." It can be seen that the local regulations of Sichuan Province have already made clear that the operating right for passenger transport may be used on a paid basis. Although the normative document formulated by the Sichuan Provincial Transport Department predates the local regulations, the document's implementation of time-limited paid use of operating permits does not conflict with the local regulations. Based on the needs of administrative enforcement and administrative management, the operating right for passenger transport also needs to be subject to a certain time limit. In terms of the challenged administrative procedure, the procedure was clearly improper. The content of the challenged administrative act was a measure of implementing re-registration for operators of passenger

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human-powered tricycles who already held lawful licenses, with those passing examination paying the paid use fee and those failing to register within the time limit automatically relinquishing their rights. The challenged act was the collection of a paid use fee from the existing operators of passenger human-powered tricycles who had already obtained lawful licenses, whereas the rights of the above operators of passenger human-powered tricycles had been obtained through the grant of the operating right license in 1996. There was a succession and connection relationship between the two administrative acts before and after. With respect to the 1996 act of granting the operating right license, when the administrative organ granted an administrative license or other beneficial administrative act, it should clearly notify the time limit of the administrative license. When the administrative organ granted the administrative license, the administrative counterpart also had the right to know the time limit of the administrative license. When the administrative organ implemented the grant of the operating right license for human-powered passenger tricycles in 1996, it did not notify Zhang Daowen, Tao Ren, and others of the two-year paid use period for the operating right of the human-powered passenger tricycles. Zhang Daowen, Tao Ren, and others did not know the paid use period of their operating right. The 1996 operating right license of the Jianyang Municipal Government was clearly improper in procedure, directly causing the procedure of the challenged administrative act in this case, which had a successive relationship with it, to be clearly improper.

On the issue of the time limit of the operating right for passenger human-powered tricycles. The applicants argued that, because the Jianyang Municipal Government did not notify the time limit when implementing the operating right license for human-powered passenger tricycles in 1996, the operating license should be deemed to have no time limit. The Supreme People's Court held that the purpose of the Jianyang Municipal Government's implementation of the operating right license for human-powered passenger tricycles was to regulate the operating order of human-powered passenger tricycles. Human-powered passenger tricycles are a mode of allocation of public resources involving the public interest, and the setting of a certain time limit is necessary. Objectively, the Provisions of the Sichuan Provincial Transport Department on the Administration of Small Vehicle Passenger Transport (Chuan Jiao Yun [1994] No. 359) also clarified the time limit of the license. The Jianyang Municipal Government did not notify the time limit of the license, which was a procedural defect, but the Supreme People's Court did not support the applicants' claim that the administrative license had no time limit solely on that basis.

On the issue of Zhang Daowen, Tao Ren, and others actually enjoying the "benefit-the-people" policy. The Jianyang Municipal Government carried out rectification in response to such problems actually existing locally as severely overloaded roads, serious air and noise pollution, and the conditions of being "dirty, disorderly, and poor" and "crowded, blocked, and narrow." This conformed to the needs of urban management and the wishes of the people, and its legitimacy should be affirmed. In order to resolve the petition issues left over from the litigation in this case, the Jianyang Municipal Government successively carried out two "benefit-the-people" actions and made active efforts to substantively resolve the dispute in this case, and its subsequent acts should also be affirmed. This court confirms the fact that Zhang Daowen, Tao Ren, and others accepted the capacity allocation plan for withdrawing from market operation and made commitments. However, when taking administrative acts, an administrative organ must strictly abide by the principle of administering in accordance with the law and ensure that administrative power is exercised in accordance with statutory procedures.

The Supreme People's Court held that the Announcement and the Supplementary Announcement made by the Jianyang Municipal Government were defective and clearly improper in administrative procedure. However, considering that after the challenged administrative act was made, the traffic order in the urban area of Jianyang City improved, the road operating capacity of the city improved, the appearance of the urban area continued to improve, and through the two "benefit-the-people" actions, the vast majority of the original 401 tricycles had completed replacement in batches, if a judgment revoking the challenged administrative act were rendered, it would cause obvious adverse effects to the order of administrative management and the public interest. The Supreme People's Court, in accordance with Article 58 of the

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Interpretation of the Supreme People's Court on Several Issues Concerning the Implementation of the Administrative Litigation Law of the People's Republic of China, which provides for situational judgments, confirmed that the challenged administrative act was unlawful.

Relevant Legal Provisions

Item (2) of Paragraph 1 of Article 89 of the Administrative Litigation Law of the People's Republic of China.

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