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Orders

(Tor. 21)

[Garuda Emblem]

Complaint No. 719/2556

Order No. 269 /2557

In the Name of His Majesty, the King

Supreme Administrative Court

Date 29 Month May Year 2014

Versus	{	JT International Company (Thailand), Limited No. 1	Plaintiff	
		JT International SA No. 2		
		{	Minister of Public Health No. 1	Defendant
			Ministry of Public Health No. 2	

In the Matter of: A suit alleging that an administrative agency or officer of the government acted unlawfully. (Appeal to Suspend Enforcement of a Law or Administrative Order)

The two Defendants submitted an Appeal of Orders issued in Black Case No. 1270/2556 by the Administrative Court of First Instance (The Central Administrative Court).

The two Plaintiffs claim that Plaintiff 1 has the status of a limited company and is a member of the Japan Tobacco Group of Companies (JT Group), one of the leading producers of tobacco related products in the world. Plaintiff 1 holds a permit from the Excise Department to import cigarettes into the Kingdom, making Plaintiff 1 an importer under the meaning of Article 12 of the Tobacco Products Control Act of 1992. Plaintiff 2 is a juristic entity having principal offices in Geneva, Switzerland, organized and operating

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/under the laws...

Upon deliberation, the Supreme Administrative Court finds that the third paragraph of Article 72 of the Rules for General Arbitration Meetings in the Supreme Administrative Court, Administrative Case Procedure of 2000, specifies that when the Court finds that an administrative regulation or order that gives rise to a suit is likely to be unlawful, that allowing that administrative regulation or order to remain in effect will cause serious damage that is difficult of remedy after the fact, and that suspending the said administrative regulation or order will not be an obstacle to the administrative functions of the state or to public services, the court has authority to suspend enforcement of the administrative regulation or order as the court deems appropriate. Upon consideration, the court finds that the conditions whereby the court would have authority to order suspension of enforcement of the administrative regulation or order that gave rise to this suit are three in number. The first issue is whether the administrative regulation or order in question is likely to be unlawful. The second issue is whether allowing the administrative regulation or order to remain in effect while the case is under consideration will cause serious damages to Plaintiffs that will be difficult of remedy after the fact. That is, even if the court eventually rules to nullify or orders withdrawal of this administrative regulation or order, such a ruling or order by the court will not retroactively remedy the entire losses suffered by Plaintiffs due to the administrative regulation or order while the case is being considered. The third issue is whether suspension of enforcement of the administrative regulation or order or, in other words, temporary delay or abatement of enforcement of the administrative regulation or order during consideration of the case will not constitute an obstacle to the administrative functions of the state. We find that the matter to be considered is the first condition: whether or not the administrative regulation or order is likely to be unlawful.

Among the facts of the case, it appears that Defendant 1 issued a Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels in 2013. Article 3 of the said Notice specified that manufacturers or importers of cigarettes must print certain images, warning statements, and contact channels for smoking cessation specified in Article 2 [of the Notice] on packs and cartons of cigarettes covering an area of not less than 85 percent of at least 2 of the largest surfaces, positioned by the top and left edges of the cigarette pack or carton. Article 6 (3) of the said Notice specified that when not less than

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/10 cigarette packs...

10 cigarette packs or cartons are contained within a box or wrapper, the cigarette packs or cartons within one such box or wrapper must display each of the 10 different styles of labels bearing images, warning statements, and contact channels for smoking cessation. Plaintiff 1 has the status of a limited company, a member of the Japan Tobacco Group of Companies (JT Group), and a manufacturer of tobacco related products holding a permit from the Excise Department to import cigarettes into the Kingdom. Plaintiff 2 is a manufacturer of tobacco products, an international business unit of the JT Group, and a distributor of merchandise under that brand. Plaintiff 2 has rights to use and to license others to use certain trademarks registered in Thailand. Plaintiffs assert that they are experiencing difficulty and loss due to the said Notice, and have therefore brought suit in order to ask the court to order withdrawal of the Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels of 2013. Therefore, we must next consider the conditions whereby the Administrative Court would have authority to issue orders suspending enforcement of the regulation, thus:

The first issue is whether or not the Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels of 2013 is likely to be unlawful. When we consider the reasons for issuing this Notice, we find that the Tobacco Products Control Act of 1992 states “It is now medically accepted that tobacco products cause serious diseases in consumers, as well as impacting the unborn fetus of a pregnant consumer. Tobacco products are also a serious danger to persons close to the consumer, as well. However, at this time there is no specific law to control tobacco products. This allows advertising and promotion of tobacco products by various means to proliferate, especially among the youth who are the nation’s most vital resource. This situation creates serious obstacles to the prevention of the diseases that result from tobacco consumption and to the maintenance of public health. It is therefore necessary to promulgate this Act.” Further, we must consider the requirements which engendered the dispute in this case, Article 3 and Article 6 (3) of the Ministry of Public Health Notice on Rules, Procedures, and

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/Conditions for...

Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels of 2013. The requirements at issue in this dispute call for specified images on packs and cartons of cigarettes to occupy 85 percent of the surface area, and for cigarettes packed in cartons to display 10 separate images, as detailed above. We find that the requirements issued in this instance are not outside the intended scope of the law on control of tobacco products. The requirements were issued to protect the people and our youth. At this stage, whether we admit that there are no studies on the several impacts or damages that may result, such as damages resulting from the [requirement for] enlargement of the images from an area of 55 percent of the front and back of the cigarette pack to 85 percent, which the two Defendants assert is done to comply with the World Health Organization Framework Convention on Tobacco Control (FCTC); whether issue of the said Notice without any study of the impacts and damages that may result is an excessive burden for the two Plaintiffs, whether these requirements will actually achieve the intended purpose or create benefit for consumers in an appropriate ratio to the damage suffered by the two Plaintiffs; whether the two Plaintiffs participated in the procedure by which the Notice was issued; whether the proposals and objections by parties having an interest in the matter were heard; and whether there will be impacts on the trademark rights held by the two Plaintiffs, these things are matters that will be considered later during the case. However, they may not be significant to the exercise of the Court's discretion in deciding whether to order suspension of enforcement of the regulation at this stage. The facts of the case establish clearly that there was no report of any study of these matters. It also appears that the two Defendants submitted in defense that there are research studies and opinion surveys relating the warning images on cigarette packs to tobacco consumption. Even if these facts were not submitted in the Administrative Court of First Instance, this problem is still recognized as a problem of the public good that the Defendants may assert at this stage. Further, even if the facts establish that the effect of expansion of warning images on cigarette packs on consumption by existing smokers is only temporary, the warnings will still affect new consumers or prospective consumers of tobacco to some degree. In any event, the arguments explaining the facts brought by the two Plaintiffs are matters for consideration and deliberation later in the case. Therefore, at this stage the Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Images, Warning Statements, and Contact Channels

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/for Smoking...

for Smoking Cessation on Cigarette Labels of 2013 is not likely to be unlawful in any way.

The second issue is whether having the Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels of 2013 remain in effect while this case is still being decided will cause problems that will be difficult of remedy after the fact. That is, if the Court eventually rules or orders withdrawal of the administrative regulation or order, the Court's ruling or order may not provide a retroactive remedy for all damages sustained by the two Plaintiffs due to enforcement of the disputed Ministry of Public Health rules while the case was pending. Or it may be, considering the facts and circumstances of the case, that even in the event that the Court eventually rules or [possible omission: orders] that the Ministry of Public Health Notice be withdrawn, the two Plaintiffs may be able to retroactively recover damages they sustained from enforcement of the disputed Ministry of Public Health Notice. That is, the two Plaintiffs will restore their production system to its former state without experiencing undue loss, because they will be using their former production system and will not experience any impact to their trademarks or other advantages. In this case, there would not be any undue burden. Further, the admissible fact that there are other producers who have been able to comply with the disputed Ministry of Public Health Notice refutes the claim that compliance with the Ministry of Public Health Notice is an insurmountable manufacturing technical problem. Therefore, allowing the Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels of 2013 to remain in effect while this case is still being decided will not in any way cause problems that will be difficult of remedy after the fact.

The third issue is whether the temporary suspension of the Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels of 2013 while this case is decided will be an obstacle to administration of the state. The decision by the Court [of First Instance] that this not likely to be an

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/instance of...

instance of unlawful action and the Court's opinion that to allow the disputed Ministry of Public Health Notice to remain in effect while the case was being decided would result in damages that would be difficult of remedy after the fact are wrong. This case does not fulfill the conditions whereby the Court would have authority to order suspension of enforcement of the regulation. Further analysis of this matter would not change our decision. Therefore, the Supreme Administrative Court does not concur with the order of the Administrative Court of First Instance to suspend enforcement of the Ministry of Public Health Notice on Rules, Procedures, and Conditions for the Display of Images, Warning Statements, and Contact Channels for Smoking Cessation on Cigarette Labels of 2013 while this case is decided.

The order of the Administrative Court of First Instance is reversed, and the petition by the two Plaintiffs to suspend enforcement of the regulation is denied.

Mr. Manoon Panyakariyakorn

Justice in Charge of Case File

[signature]

Justice, Supreme Administrative Court

Mr. Worapot Wisarutpich

[signature]

Chief Justice, Supreme Administrative Court

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Mr. Worawut Siriyutwatana

[signature]

Justice, Supreme Administrative Court

Mr. Somchai Ngamwongchon

[signature]

Justice, Supreme Administrative Court

Mr. Banchongsak Wongprachon

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Justice, Supreme Administrative Court

Justice Presenting the Case: Mr. Nat Rat-amorn

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