IX. Civil environmental public interest litigation by the * Environmental Institute of Chaoyang District of Beijing against the Shanxi *Aluminium Industry Co., Ltd. over environmental pollution

[Case Number] Guiding Case No. 260

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[Adjudicating Court and Collegial Bench Members]

First instance: The Intermediate People's Court of Xinzhou City of Shanxi Province

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[Keywords]

Civil / Civil public interest litigation over environmental pollution / Mediation agreement / Settlement agreement / Substantive review / Public interests of the society

[Essence of Judgment]

1. Mediation or settlement agreements on ecological and environmental restoration and other matters reached by the parties to civil environmental public interest litigation shall go through a substantive review by the people's court. After the review, if the content of the agreement is sufficient to protect public interests of the society, a mediation decision shall be made according to the law.

2. When reviewing a mediation or settlement agreement, the people's court shall, based on the actual situation of the case, put emphasis on whether specific restorative measures, period and costs, acceptance procedure, supervisory body and other items are specified in the agreement, and evaluate whether the performance of the agreement can achieve the targets of restoring the damaged ecology and environment, recovering the state and functions of the ecology and environment, and eliminating risks of ecological and environmental damage.

[Basic Facts]

Shanxi *Aluminium Industry Co., Ltd. (hereinafter referred to as the "Shanxi * Aluminium Company") had continuously stored industrial solid waste red mud discharged from extracting aluminium oxide from bauxite in a red mud tank in Yuanping City of Shanxi Province since 2006. The red mud tank covered a land area of 1,840 mu (approx. 1.227 km^2) with a total storage capacity of 16.643 million m^3. Red mud is highly alkaline and corrosive. Prolonged exposure to air can result in

severe dust problem during windy seasons when its surface dries, causing serious air pollution and posing considerable threats to the cultural relics under state protection located just one kilometre away. In November 2014, the Environmental Protection Bureau of Xinzhou City of Shanxi Province held that the red mud tank of the Shanxi * Aluminium Company was causing dust pollution, and ordered it to stop the illegal acts and imposed a fine. Due to the iterative technological upgrade, the red mud tank was no longer in operation, and shall be closed in accordance to the law. Otherwise, it might cause geological disasters such as dam breaks, posing risks to the life and property of the people and the surrounding ecology and environment.

On 24 August 2016, the * Environmental Institute of Chaoyang District of Beijing Municipality (hereinafter referred to as the "Chaoyang * Environmental Institute") lodged a civil public interest lawsuit with the Intermediate People's Court of Xinzhou City of Shanxi Province on the grounds that the red mud tank had brought significant risks to the surrounding ecology and environment and jeopardized the public interests of the society, requesting the court to confirm the harmfulness of the red mud in the red mud tank of the Shanxi * Aluminium Company, and order measures such as immediate closure of the site to eliminate the harm and danger to the surrounding environment.

During the trial, the Shanxi * Aluminium Company and the Chaoyang * Environmental Institute voluntarily reached a settlement agreement through negotiations on 18 January 2017. First, the Shanxi * Aluminium Company undertook to take measures according to the law and regulations to make sure the red mud tank meets national environmental protection requirements. Second, the Shanxi * Aluminium Company undertook to spend no less than CNY 50 million every year on environment-related matters, including corporate environmental governance and treatment, environmental protection personnel training, pollution prevention and control, investment, operation and maintenance, material consumption of environmental protection facilities, holistic management of the red mud tank, etc. Third, upon effectiveness of the agreement, the Shanxi * Aluminium Company undertook to set up a special account of CNY 3 million within two months, which would be used as a special fund for environmental protection and control of the red mud tank, so as to make sure the environmental governance and treatment of the red mud tank. Moreover, the governance and treatment of the red mud tank would not be limited to this special fund for environmental protection and control. Fourth, the Shanxi * Aluminium Company voluntarily accepted the supervision of the Chaoyang * Environmental Institute, and the supervision period would be three years starting from the day following the effective date of the agreement. Fifth, the Shanxi * Aluminium Company would bear the lawyer's fees of the Chaoyang * Environmental Institute in the case. Sixth, the Shanxi * Aluminium Company would assume the litigation costs.

After review, the Intermediate People's Court of Xinzhou City held that, given the

scale and harmful risks of the red mud tank involved in the case, as well as the existing dust prevention measures and proposed measures in the settlement agreement, leaving the site unclosed would neither fundamentally resolve the pollution problem, nor achieve the intended effect of ecological and environmental restoration. It was therefore deemed insufficient to protect the public interest. Accordingly, the court could not confirm the original settlement agreement according to the law, or make a mediation decision based on it. Recognising that the closure of a red mud tank poses a worldwide technical challenge and there was no precedent domestic experience for closing one of this scale, the Xinzhou Intermediate People's Court organized technical experts to conduct on-site investigation of the red mud tank involved in the case and discuss and analyse on whether the site could be closed, and guided the parties in re-negotiating on restorative measures, period and costs, acceptance procedure and supervisory body and other matters for the purpose of eliminating ecological and environmental risks.

On 16 November 2018, moderated by the people's court, the Shanxi * Aluminium Company and the Chaoyang * Environmental Institute reached a mediation agreement. First, according to requirements of the administrative authority for safe production supervision and other state organs, the Shanxi * Aluminium Company shall close the site of the red mud tank within five years upon effectiveness of the mediation agreement, and shall inform the Chaoyang * Environmental Institute of the performance of the mediation agreement in written form at least once a year, which shall be reported to the people's court as well. Second, during the period of site closure, the Shanxi * Aluminium Company shall take measures to prevent environmental pollution as required, and continue to take dust suppression measures such as water sprinkling and covering. It shall strictly carry out the ecological and environmental protection requirements in the feasibility study and design schemes approved, recognized and filed by relevant administrative departments to prevent groundwater, soil and air pollution. It shall engage a third-party professional institution to conduct mass detection of the surrounding environment (underground water and air) of the red mud tank at least twice a year and deliver detection reports. Third, the Shanxi * Aluminium Company shall take the initiative to raise all the funds for the site closure. The engineering cost was estimated to be CNY 150 million. Fourth, in the event of natural, social, technical or third-party reasons that prevent the site from being closed, the Shanxi * Aluminium Company shall promptly notify the people's court and the Chaoyang * Environmental Institute in writing. Once the impediments are eliminated, the site closure work shall continue and the engineering period shall be extended accordingly. If the Shanxi * Aluminium Company explicitly states non-closure or delays closure of the site, the Chaoyang * Environmental Institute can apply to the people's court to charge the Shanxi * Aluminium Company for the remaining project fees or freeze the amount (up to CNY 150 million), and can apply to the people's court to entrust a qualified professional institution to complete the site closure work through a bidding process. The amount charged or frozen shall be directly used for paying for the expenses incurred therefrom. Fifth, upon

completion of the closure, an acceptance team composed of professional technical experts and representatives from design, engineering, monitoring (investigation) and other institutions organized by the Shanxi * Aluminium Companyto conduct completion acceptance . Only when the work was accepted could the closure be regarded to have met its environmental targets.

The Xinzhou Intermediate People's Court made a 30-day public announcement of the abovementioned mediation agreement on 27 November 2018, and no objections were received during the announcement period.

[Judgment]

The Intermediate People's Court of Xinzhou City of Shanxi Province, after reviewing the mediation agreement reached between the Shanxi * Aluminium Company and Chaoyang * Environmental Institute on 16 November 2018, confirmed the agreement and issued the [2016, Shanxi, 09, Civil First Trial, No. 35] civil mediation decision on 28 December 2018.

[Grounds for Judgment]

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 [Judicial Interpretation, 2015, No. 1] stipulates that "… If, upon review, the people's court holds that the content of a mediation agreement or a settlement agreement does not harm the public interests, it shall render a mediation decision …" Accordingly, mediation or settlement is allowed in environmental civil public interest litigation. However, the people's court shall conduct a substantive review of the content of the mediation or settlement agreement to confirm that the parties can exercise their litigation rights in accordance with the law to ensure the content and performance of the agreement are sufficient to protect the public interests.

In this case, the Chaoyang * Environmental Institute lodged an environmental civil public interest lawsuit against the Shanxi * Aluminium Company, and successively reached a settlement agreement and a mediation agreement in the litigation process. In this regard, the people's court shall review whether the content of the agreements between the parties on ecological and environmental restoration is sufficient to protect the public interests of the society and then decide whether to make the mediation decision. The people's court shall focus on whether the agreements have included specific measures, period and costs of the restoration, acceptance procedure, supervisory body and other matters, and evaluate whether the performance of the agreements can achieve the targets of restoring the damaged ecology and environment, recovering the status and functions of the ecology and environment, and eliminating risks of ecological and environmental damage, while taking such factors as the scale

and degree of the ecological and environmental damage and the complexity of the ecological and environmental restoration into account.

When the parties reached a settlement agreement on 18 January 2017, the amount of red mud piled in the red mud tank had reached the designed upper limit, and the environmental problem could not be solved without closing the site. However, the settlement agreement did not require the Shanxi * Aluminium Company to close the site, nor did it regulate specific measures and timeframe of restoration. It only required the Shanxi * Aluminium Company to make a payment commitment, but did not specify the amount in the payment to be used for restoring the surrounding environment of the red mud tank. Hence, the settlement agreement reached between the parties was not sufficient to restore the damaged ecology and environment, could not recover the status and functions of the ecology and environment or effectively eliminate the risks of ecological and environmental damage. It did not comply with the requirement on "not harming the public interests of the society" as specified in the 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, thus the people's court did not issue a mediation decision.

On 16 November 2018, the two parties reached a mediation agreement moderated by the people's court, agreeing to raise engineering fees of CNY 150 million to complete the closure work of the red mud tank within five years to fundamentally resolve environmental problems arising from the red mud tank. From the perspective of the content, the mediation agreement specified period, costs and measures of the restoration, alternative plans, supervisory body and methods, acceptance body and other matters. To make sure the content of the agreement was reasonable and feasible, the people's court made a public announcement of the abovementioned mediation agreement according to the law, and did not receive any objection during the announcement period. Hence, the people's court held that the mediation agreement complied with the requirement on "not harming the public interests of the society" in the 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, and thus made a mediation decision according to the law.

After the case was concluded, the people's court took the initiative to communicate with relevant administrative departments to clarify the standards and technical specifications for ecological restoration and management of the tank area, and urged the Shanxi * Aluminium Company to make a site closure plan and carry it out on schedule. The site closure project involved a total investment of over CNY 130 million, mainly including red mud treatment and ash slope adjustment of 1.97 million m^3, installation of 4 new drainage systems, soil coverage of 380,000 m^3, and the laying of anti-seepage membranes and greening areas of 855,000 m^2. The people's court visited the site regularly to make sure the completion of the closure project was on schedule and continued to track the progress of the restoration. After five-year

governance and treatment, the closure project was completed and passed the environmental protection acceptance in November 2023, and passed the security acceptance by the Department of Emergency Management of Shanxi Province in December 2023, achieving the effects of restoring the ecology and environment and eliminating the risk of damage. Up to this point, all the items in the civil mediation decision have been fully fulfilled.

In addition, while urging the Shanxi * Aluminium Company to perform obligations determined in the civil mediation decision, the people's court guided the company in adjusting and optimizing its industrial layout, building an industrial cluster for green development, and developing clean energy projects such as solar energy, wind energy, and energy storage based on the land resources after the site closure, so as to achieve effective integration of ecological, economic and social benefits.