autonomy of the assembly and examined under a less strict standard. So the Court found that the purpose to ensure the fair administration of the assembly and the reliability of citizens is rational and necessary, and the measure does not exceed the assembly's discretion because this ordinance imposes legal force to the member of the assembly or the manager of the company.

In this case, what matters is whether it is constitutional to make such a restriction of free political activity of a member of an assembly and the economic freedom of the second degree of kinship's company. In the latter case, the right of a private person who is related with the assembly comes into question. So, the stricter standard is required. In Japan, the money-and-politics problem has become an object of social and political concern. So I agree that it is necessary and reasonable to ensure the fair administration of the assembly and the reliability of citizens. However, this ordinance restricts not only the political activity of a member of an assembly, but also the second degree of kinship of a member of the assembly which bids for Fuchu City's works. This ordinance has no legal force, so this restriction is de facto. However, indirectly a restriction exists, so it is necessary to show the rationality and necessity of such restriction.

If a company is managed by a second degree of kinship of the member of the assembly, there is no rule of thumb that the member of the assembly participates in management and no evidence. Even if the purpose of this ordinance which is to ensure fair administration of the assembly and the reliability of citizens is reasonable, it is still questionable the suitability of the measures is. Although the Court points out that free political activity is self-regulation which is based on the internal autonomy of the assembly, the restriction, particularly the restriction to the second degree of kinship, must be examined under the strict standard.

2. Administrative Law

X et al. v. Japan
Supreme Court 1st P.B., October 9, 2014
Case No. (*Ju*) 771 of 2014

2241 Hanrei Jiho 3, 1408 Hanrei Taimuzu 32

Summary:

The failure of the Minister of Labour to exercise the authority to enact ministerial ordinances based on the Labor Standards Act (prior to the revision by Act No. 57 of 1972) as required to prevent the occurrence of asbestos-induced diseases at factories or workplaces operated to manufacture or otherwise handle asbestos products, is illegal for the purpose of the application of Article 1, paragraph (1) of the State Redress Act.

Reference:

State Redress Act, Article 1 (1); Labor Standards Act, Article 1; Labor Standards Act (prior to the revision by Act No. 57 of 1972), Articles 42, 43 and 45; Industrial Safety and Health Act, Articles 22, 23 and 27.

Facts:

The plaintiffs of the case, who were workers at factories or workplaces operated to manufacture or otherwise handle asbestos products and suffered asbestos-related diseases or their successors, sued the State of Japan, claiming that the defendant illegally failed to exercise its power to regulate based on the Labor Standards Act and Industrial Safety and Health Act and thus is legally responsible to pay compensation.

The court of the first instance issued the judgement partly awarding monetary compensation for the plaintiffs. The Osaka High Court modified the judgement in favor of the plaintiffs, and the State of Japan appealed to the Supreme Court.

Opinion:

The judgment in prior instance is quashed with respect to the part for which the appellant of final appeal (State of Japan) lost the case in relation to Appellee X1 and the appeal to the court of second instance filed by Appellee X1 is dismissed.

The remaining part of the final appeal filed by the appellant of final appeal (State of Japan) is dismissed.

(2) It is appropriate to construe that if the failure of national officials or

officials of public bodies to exercise the authority to enforce regulations is found to be beyond the allowable limits and therefore extremely unreasonable under the specific circumstances concerned in light of, inter alia, the purposes and objectives of the laws and ordinances that provide for the said authority as well as the nature of thereof, such failure is illegal, in relation to people who have suffered damage due to the failure, for the purpose of the application of Article 1 (1) of the State Redress Act (See 2001 (Ju) No. 1760, judgment of the Third Petty Bench of the Supreme Court of April 27, 2004, Minshu Vol. 58, No. 4, at 1032; 2001 (O) No. 1194 and 1196, 2001 (Ju) No. 1172 and 1174, judgment of the Second Petty Bench of the Supreme Court of October 15, 2004, Minshu Vol. 58, No. 7, at 1802).

This reasoning can be applied in this case as follows. The Former Labor Standards Act aims to ensure that working conditions meet the needs of workers to live lives worthy of human beings (Article 1), and provides that an employer must take necessary measures to, inter alia, prevent danger from dusts, etc. (Article 42, etc.). The Industrial Safety and Health Act aims to, inter alia, secure the safety and health of workers in workplaces (Article 1), and provides that an employer must take necessary measures to, inter alia, prevent health impairments of workers, etc. (Article 22, etc.). These Acts leave the specific measures that an employer must take to be set forth by an order or ordinance of the Ministry of Labour (Article 45 of the Former Labor Standards Act, Article 27 of the Industrial Safety and Health Act). The Former Labor Standards Act and the Industrial Safety and Health Act thus comprehensively leave such specific measures to be set forth by an order or ordinance of the Ministry of Labour because the measures that an employer must take may cover a wide range of specialized technical matters, and it seems appropriate to delegate the competent minister to amend the contents of such measures as quickly as possible so that they would be in line with technological advances and the latest medical findings, etc.

In light of the purposes of the abovementioned Acts and the objectives of the abovementioned provisions, the authority of the Minister of Labour, the competent minister under the said Acts, to enforce regulations based on the said Acts, should have been exercised at the right time and in an appropriate manner in order to amend the existing regulations as quickly

as possible so that they would be in line with technological advances and the latest medical findings, etc. with the primary aim of improving the working environment of workers engaged in dust-generating operations, etc., preventing harm to their lives and bodies, and guaranteeing their good health (see the abovementioned judgment of the Third Petty Bench of the Supreme Court of April 27, 2004).

…

(6) In light of these points, it can be said that the Minister of Labour should have appropriately exercised the authority to enact ministerial ordinances based on the Former Labor Standards Act and thereby make it obligatory under penal provisions to install local exhaust ventilation systems at asbestos factories so as to promote the diffusion of local exhaust ventilation systems, as quickly as possible when it became possible to impose such an obligation on or after March 31, 1958, when the medical findings on asbestosis were established. It is appropriate to construe that by 1958, the practical knowledge and technology relating to the installation, etc. of local exhaust ventilation systems had been diffused to a considerable extent so that it was possible to install local exhaust ventilation systems that could work well at asbestos factories, and also by that time, the practical technical findings as necessary for making it obligatory to install local exhaust ventilation systems at asbestos factories had become available. Furthermore, in 1958, the techniques for measuring the dust concentration at asbestos factories and the useful assessment indicators for dust concentration were available, and thus it can be said that it was also possible at that time to specify the performance requirement for local exhaust ventilation systems. In view of these, it can be said that it would have been possible, as of May 26, 1958, when the 1958 Circular Notice was issued, for the Minister of Labour to exercise the authority to enact ministerial ordinances and thereby make it obligatory to install local exhaust ventilation systems at asbestos factories.

(7) Putting all these circumstances of the case together, the Minister of Labour should have exercised, as of May 26, 1958, the authority to enact ministerial ordinances based on the Former Labor Standards Act and thereby made it obligatory under penal provisions to install local exhaust

ventilation systems at asbestos factories, and the minister's failure to exercise the said authority to enact ministerial ordinances based on the Former Labor Standards Act until April 28, 1971, when the Former Specified Chemical Substances Ordinance was enacted, should be judged to be extremely unreasonable in light of, inter alia, the purpose and objective of the Former Labor Standards Act as well as the nature of the said authority, and therefore illegal for the purpose of the application of Article 1, paragraph (1) of the State Redress Act. The determination of the court of prior instance mentioned … which goes along with this holding can be affirmed as justifiable. The arguments by the agents for final appeal cannot be accepted.

Editorial Note:

The Supreme Court has issued a series of decisions on the 'failure to exercise regulatory authority' cases. This case cites two of them. In the first case (judgment of the Third Petty Bench of the Supreme Court of April 27, 2004, Minshu Vol. 58, No. 4, at 1032), the Supreme Court held that the failure of the Minister of International Trade and Industry to exercise the authority to enforce safety regulations under the Mine Safety Law in order to prevent outbreak of pneumoconiosis in coal mines was extremely unreasonable and considered as illegal under Article 1 (1) of the State Redress Act. In the second case, the litigation brought from the Minamata disease patients in the Kansai region (judgment of the Second Petty Bench of the Supreme Court of October 15, 2004, Minshu Vol. 58, No. 7, at 1802), the Supreme Court held that the failure of the national government to exercise the authority to enforce regulations under the Water Quality Laws in order to prevent the spread of health hazards caused by Minamata disease was illegal under Article 1 (1) of the State Redress Act.

According to these judgements, if the failure of national officials or officials of public bodies to exercise the authority to enforce regulations is found to be beyond the allowable limits and therefore extremely unreasonable under the specific circumstances concerned in light of, inter alia, the purposes and objectives of the laws and ordinances that provide for the said authority as well as the nature of thereof, such failure is illegal, in relation to people who have suffered damage due to the failure, for the

purpose of the application of Article 1 (1) of the State Redress Act.

The factors determining illegality of the government failure to exercise its authority are: (1) purpose and objective of the law involved, (2) the nature of the rights/interests infringed by the failure, (3) whether it was able to foresee possibility of harms, (4) whether it was able to avoid causing such harms, and (5) whether the government's intervention was expected to avoid such harms.

This judgement found that the failure of the government to exercise its authority to enact ministerial ordinances based of the Labor Standards Act was extremely unreasonable and considered as illegal, and ordered the State to pay compensation for the damages caused by such failure. The court emphasized that, in light of the Act's objective to ensure that working conditions meet the needs of workers to live lives worthy of human beings, the authority of the Minister of Labour must be exercised 'at the right time' and 'as quickly as possible' to be in line with technological advances and the latest medical findings.

This is the judgement on 'workplace' asbestos case. There are also other type of asbestos cases brought by the construction workers affected by asbestos. These construction workers cases are still pending at several high and district courts.

3. Law of Property and Obligations

X v. Y
Supreme Court 3rd P. B., October 28, 2014
Case No. (*Ju*) 2007 of 2012
68 (8) Minshu 1325

Summary:

This is a case in which the Supreme Court held that with regard to the money paid under the contract for contribution and distribution of money which is against public policy and therefore void, it is impermissible under the principle of good faith to refuse to return the money thus paid, by reason that the payment thereof constitutes performance for illegal cause.