



Case 2012 (Gyo-Hi) 267

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Country: Japan

Region: Asia

Year: 2012

Court: Fukuoka High Court

Health Topics: Environmental health

Human Rights: Right to a clean environment

Facts

The governor of the Miyazaki Prefecture granted permission for a company that collects, transports, and disposes of industrial waste to establish an industrial waste treatment facility. When the company applied for permission, it submitted a document called the “Environmental Impact Survey Report,” which detailed the survey results regarding the impact of the establishment of the disposal site on the environment of the surrounding areas. After obtaining permission, the company established a facility that conducted the landfill disposal of industrial waste (e.g., ash, sludge, waste oil, waste plastic, soot, dust, debris, etc.) and specially controlled industrial waste (e.g., waste asbestos).

The appellants lived in an area within 1.8 kilometers from the center of the disposal site, except one appellant, who lived at least 20 kilometers away from the center of the disposal site. Appellants sought revocation of the licenses granted to the industrial waste company.

The lower court determined that the appellants did not have standing to seek revocation of the licenses, and dismissed the action. It made its decision based on the determination that there was no evidence that the industrial waste disposal facility could cause damage to the appellants’ lives, bodies, and living environment. Moreover, even if the waste facility could cause such damage, there was no evidence of the details and degree of the damage.

Article 14 of the Waste Management and Public Cleaning Act stated that a person who conducts disposal of industrial waste must obtain a license from the governor who has jurisdiction over the area where the person intends to carry out the service. This Act was enacted to ensure the conservation of the living environment and the improvement of public health. Article 9 of the Administrative Case Litigation Act provided that that an action for declaration of nullity of an original administrative disposition (here, the granting of licenses) may only be filed by a person who is likely to suffer damage from those dispositions.

Decision and Reasoning

The Court held that all appellants who lived within 1.8 kilometers of the waste facility had standing to seek revocation of the licenses because they lived in an area where it could be expected that they would suffer damage to their health or living environment due to issues caused by hazardous substances discharged from the disposal site. These issues included air and water pollution, soil contamination, and offensive odor.

The Court held that the appellant who lived at least 20 kilometers away from the center of the disposal site in an area that was not included in the area covered by the Environmental Impact Survey Report did not have standing because it was not likely that he would suffer damage to his health or living environment due to proximity to the disposal site.

Decision Excerpts

“[T]he provisions of the Waste Management Act concerning the grant and renewal of a license for the industrial waste, etc. disposal service can be understood as aiming to protect the specific interest of the residents who live in areas surrounding the industrial final disposal site to avoid suffering considerable damage to their health or living environment due to the air pollution, soil contamination, water pollution, offensive odor or the like which may arise from any hazardous substances discharged from the final disposal site. In light of such content, nature, degree, etc. of the damage as mentioned above, it must be said that such specific interest would be difficult to absorb and dissolve into the general public interest.” Section 4(1),

Para. B.

“[T]his issue should be determined reasonably in light of the socially accepted standards, while taking into consideration the specific conditions such as the type and size of the industrial waste final disposal site and focusing on the distance between the areas where these residents live and the location of the final disposal site . . . ” Section 4(1), Para. D.

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