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United States Vs. Lucchese

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Court : US Supreme Court

Decided On : Feb-20-1961

Appeal No. : 365 U.S. 290

Appellant : United States

Respondent : Lucchese

Judgement :

United States v. Lucchese - 365 U.S. 290 (1961)
U.S. Supreme Court United States v. Lucchese, 365 U.S. 290 (1961)

United States v. Lucchese

No. 57

Argued December 8, 12, 1960

Decided February 20, 1961

365 U.S. 290

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

This denaturalization proceeding against respondent was dismissed by the District Court because of failure of the Government to file an affidavit of good cause with the complaint, and that Court did not specify that the dismissal was "without prejudice." The Court of Appeals dismissed the Government's appeal, and this Court granted certiorari, which was sought by the Government only to assure its right to proceed against respondent in a new proceeding.

Held: under Rule 41(b) of the Federal Rules of Civil Procedure, such a form of dismissal does not bar a new denaturalization proceeding against respondent, *Costello v. United States, ante,* p. 365 U. S. 265 , and, accordingly, the writ of certiorari is dismissed. Pp. 365 U. S. 290 -291.

Writ of certiorari dismissed.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This denaturalization proceeding was brought in the District Court for the Eastern District of New York under 338(a) of the Nationality Act of 1940. 8 U.S.C. (1946 ed.) 738. The "good cause" affidavit was not filed with the complaint. The District Court dismissed the complaint following our decision in *United States v. Zucca,* 351 U. S. 91 ,

"without prejudice to the government's right to institute a proceeding to denaturalize the defendant upon

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the filing of the required affidavit."

149 F.Supp. 952. The Court of Appeals for the Second Circuit reversed, holding that the dismissal motion should have been denied. 247 F.2d 123. We reversed, and ordered the case "remanded to the District Court with directions to dismiss" the complaint. 356 U. S. 256 . The District Court, on the remand, declined to order a dismissal "without prejudice," and instead entered an order which did not

specify whether the dismissal was with or without prejudice. The Court of Appeals for the Second Circuit dismissed the Government's appeal in an unreported opinion which stated that

"there was no basis for [the district judge] to take action other than he did, namely, to comply with the clear command of the Supreme Court, without attempted embellishment. We have no occasion now to pass on the effect of that command upon possible later litigation."

The Government filed its petition for certiorari only to assure its right to proceed against the respondent in a new proceeding in the event that we should rule in *Costello v. United States, ante,* p. 365 U. S. 265 , that the order entered by the District Court for the Southern District of New York in that case precluded the institution of the second denaturalization action against Costello. Our decision today in *Costello* establishes that such a form of dismissal does not bar a subsequent proceeding against the respondent. The writ is therefore

Dismissed.

MR. JUSTICE HARLAN took no part in the consideration or decision of this case.

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