Cedar Rapids Gas Light Co. Vs. Cedar Rapids

Cedar Rapids Gas Light Co. Vs. Cedar Rapids

SooperKanoon Citation : sooperkanoon.com/91309

Court : US Supreme Court

Decided On : Mar-11-1912

Appeal No. : 223 U.S. 655

Appellant : Cedar Rapids Gas Light Co.

Respondent : Cedar Rapids

Judgement :

Cedar Rapids Gas Light Co. v. Cedar Rapids - 223 U.S. 655 (1912)
U.S. Supreme Court Cedar Rapids Gas Light Co. v. Cedar Rapids, 223 U.S. 655 (1912)

Cedar Rapids Gas Light Co. v. City of Cedar Rapids

No. 163

Argued February 29, 1912

Decided March 11, 1912

223 U.S. 655

ERROR TO THE SUPREME COURT

OF THE STATE OF IOWA

SYLLABUS

Where the general power reserved to regulate rates is only limited by the Fourteenth Amendment, no franchise contract will be presumed to imply that the municipality under its reserved right to regulate rates must only reduce them to such a point that there will be a margin to allow a discount for prompt payment.

A municipal ordinance drawn in form of a contract to be accepted by the franchisee, when accepted, becomes a contract, and is subject to the reserved powers of the municipality as limited by the laws of the state.

The practice and decisions of this Court are that 709 Rev.Stat. does not give to a writ of error to the state court in a chancery case the effect of an appeal from a judgment in such a case in the federal courts and open the evidence for reexamination in this Court.

Findings of the state court in cases either at law or in equity may depend upon questions that are reexaminable in this Court, which, if properly saved, must be answered, and this Court may examine the evidence insofar as necessary to do so in respect to rulings within the appellate jurisdiction of this Court. *Kansas City Southern Railway v. Albers Commission Co., ante,* p. 223 U. S. 573 .

Quaere whether a legislative rate, not in itself too low, is confiscatory

Page 223 U. S. 656

because it is too low to permit a further reduction in the way of discount for cash payment.

The state court having treated a public utility corporation fairly as to value of plant depreciation, and found that the net returns would exceed six percent, and given it leave to try the case again after the legislative rate had been in effect, this Court does not feel warranted in reversing on the ground that the rate is confiscatory because in some details this Court might have treated the corporation differently.

144 Ia. 426 affirmed.

The facts, which involve the validity, under the contract and due process provisions of the Constitution of the United States, of an ordinance of the City of Cedar Rapids, Iowa, fixing the price of gas at ninety cents per thousand cubic feet, are stated in the opinion.

Page 223 U. S. 666

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill brought by the plaintiff in error to restrain the enforcement of an ordinance fixing ninety cents per thousand cubic feet as the highest price to be charged in Cedar Rapids for gas. As the ordinance was passed in 1906, and had not yet been enforced, the supreme court of the state dismissed the bill without prejudice to a later suit after it should have been given a fair test. 144 Ia.

Page 223 U. S. 667

426. The plaintiff, having specially set up that the ordinance violated the contract clause of the Constitution (Art. I, 10) and the Fourteenth Amendment, brings the case here. There is a motion to dismiss, but the constitutional questions appear upon the record, and are not so frivolous as to warrant that summary course.

The supposed contract arises from a term in the ordinance under which the plaintiff was granted a renewal of its franchise in 1896. By 3,

"In consideration of the privileges herein granted to said company, it shall furnish to the inhabitants of said city gas for lighting at a price not to exceed $1.80 per thousand feet, and 20 cents per thousand cubit feet discount if consumers pay on or before the 10th of each month after consumption,"

etc. It is admitted that, under the laws of Iowa, the rate could be changed by the city, but it is argued that the quoted words import a contract that it shall not be changed to such an extent as to make impossible the offer of a discount for prompt payment, that being the cheapest and most efficient way of collecting the price of the gas. The state court assumed that there was no contract in the case, and in discussing what it treated as the sole question, whether the plaintiff would be deprived of a fair compensation for its services, pointed out that the company could secure payment by requiring a deposit in advance or by making other reasonable rules.

We are of opinion that there was no contract on the part of the city that the price should be kept high enough to allow a discount for prompt payment. The general power reserved to regulate rates was limited only by the Fourteenth Amendment. The words relied upon by the plaintiff express its promise in consideration of the privileges granted, not a promise by the city. *Knoxville Water Co. v. Knoxville,* 189 U. S. 434 , 189 U. S. 437 . It is true that the contract was in the form of an ordinance, but the ordinance was drawn as a contract, to be accepted, and it was accepted

Page 223 U. S. 668

by the plaintiff; it contained reciprocal undertakings, the one in question being that of the plaintiff, as we have said, and it was subject to the power retained by the city to regulate rates. That power, it was expressly provided by the Iowa statute, was not to be abridged by ordinance, resolution, or contract. Code of 1897, 725, 22 G.A. (1888) c. 16.

Upon the issue under the Fourteenth Amendment, the plaintiff argues on the strength of Rev.Stat. 709 that the facts are open to reexamination here. By that section, it is provided that a writ of error to a state court "shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States." It is argued that, as the decree of a state court can be reviewed only by writ of error, the foregoing words give to a writ of error in a chancery case the effect of an appeal, and open the evidence to reexamination to the same extent as upon an appeal. A suggestion to that effect was made in *Republican River Bridge Co. v. Kansas Pacific Ry. Co.,* 92 U. S. 315 , 92 U. S. 317 , but the practice and decisions from an early date have been the other way. *Egan v. Hart,* 165 U. S. 188 , 165 U. S. 189 ; *Almonester v. Kenton,* 9 How. 1, 50 U. S. 7 ; *Dower v. Richards,* 151 U. S. 658 , 151 U. S. 663 ; *Gardner v.*

Bonesteel, 180 U. S. 362 , 180 U. S. 365 , 180 U. S. 370 ; *Thayer v. Spratt,* 189 U. S. 346 , 189 U. S. 353 ; *German Savings & Loan Society v. Dormitzer,* 192 U. S. 125 , 192 U. S. 129 ; *Adams v. Church,* 193 U. S. 510 , 193 U. S. 513 .

But, of course, findings, either at law or in equity, may depend upon questions that are reexaminable here. The admissibility of evidence or its sufficiency to warrant the conclusion reached may be denied, or the conclusion may be a composite of fact and law, such as ownership or contract, or in some way the record may disclose that the finding necessarily involved a ruling within the appellate jurisdiction of this Court. Such questions, properly saved, must be answered, and, so far as it is necessary to examine

Page 223 U. S. 669

the evidence in order to answer them or to prevent an evasion of real issues, the evidence will be examined. *Kansas City Southern Railway Co. v. Albers Commission Co.. ante,* p. 223 U. S. 573 . For instance, in this case, the finding of the Court that it was not prepared to say that a ninety-cent rate was confiscatory may perhaps be taken to have been made subject to the admission that the rate was too low to permit a discount for prompt payment, and, if so, opens the question whether it was not confiscatory on that account as matter of law. The plaintiff presents a number of such objections to the decision of the court below, although confused with arguments on pure matter of fact.

It would require a very clear case to warrant the reversal of the decree of a state court which, though final in form, merely postpones a decision upon the merits for further experience. The present one is far from being such a case. To refer in the first instance to the point just mentioned, we cannot say as matter of law that at ninety cents a thousand feet the company will be unable to collect payment without losses that will amount to a taking of its property. Then again, although it is argued that the court excluded going value, the court expressly took into account the fact that the plant was in successful operation. What it excluded was the goodwill or advantage incident to the possession of a monopoly, so far as that might be supposed to give the plaintiff the power to charge more than a reasonable price. *Willcox v. Consolidated Gas Co.,* 212 U. S. 19 , 212 U. S. 52 . An adjustment of this sort under a power to regulate rates has to steer between Scylla and Charybdis. On the one side, if the franchise is taken to mean that the most profitable return that could be got, free from competition, is protected by the Fourteenth Amendment, then the power to regulate is null. On the other hand, if the power to regulate withdraws the protection of the Amendment altogether, then the property

Page 223 U. S. 670

is nought. This is not a matter of economic theory, but of fair interpretation of a bargain. Neither extreme can have been meant. A midway between them must be hit.

In this case, the court fixed a value on the plant that considerably exceeded its cost, and estimated that, under the ordinance, the return would be over six percent. Its attitude was fair, and we do not feel called upon to follow the plaintiff into a nice discussion of details. We perhaps should have adopted a rule as to depreciation somewhat more favorable to the plaintiff, or, it may be, might have allowed this or that item that the state court struck out, but there is nothing of which we can take notice in the case that could warrant us in changing the result or in saying that the plaintiff did not get as much as it could expect when leave was reserved for it to try again.

Decree affirmed.