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Marshall Vs. Dye

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Court : US Supreme Court

Decided On : Dec-01-1913

Appeal No. : 231 U.S. 250

Appellant : Marshall

Respondent : Dye

Judgement :

Marshall v. Dye - 231 U.S. 250 (1913)
U.S. Supreme Court Marshall v. Dye, 231 U.S. 250 (1913)

Marshall v. Dye

No. 401

Argued October 23, 1913

Decided December 1, 1913

231 U.S. 250

ERROR TO THE SUPREME COURT

OF THE STATE OF INDIANA

SYLLABUS

Where a board of public officials is a continuing body, notwithstanding its change of personnel, as is the case with the State Board of Elections of Indiana, the suit will be continued against the successors in office of those who ceased to be members of the board. *Murphy v. Utter,* 186 U. S. 95 .

The enforcement of the provision in Article IV, 4 of the Constitution that the United States shall guarantee to every state in the Union a republican form of government depends upon political and governmental action through the powers conferred on the Congress, and not those conferred on the courts. *Pacific Telephone Co. v. Oregon,* 223 U. S. 118 .

The claim that a judgment of the state court enjoining state officers from acting under a state statute declared to be unconstitutional denies to the state a republican form of government on account of the interference of the judicial department with the legislative and executive departments does not present a justiciable controversy concerning which the decision is reviewable by this Court.

The right of this Court to review judgments of the state courts is circumscribed within the limits of 709, Rev.Stat., now 237, Judicial Code. *Waters-Pierce Oil Co. v. Texas,* 212 U. S. 86 .

Only those having a personal, as distinguished from an official, interest can bring to this Court for review the judgment of a state court on the ground that a federal right has been denied. *Smith v. Indiana,* 191 U. S. 138 .

Whether the State Board of Elections shall submit a new state constitution to the electors of a state in accordance with a state statute concerns the members of the board in their official capacity only, and a judgment of the state court that they refrain from so doing concerns their official, and not their personal, rights, and this Court will not review such judgment.

Writ of error to review 99 N.E. 1 dismissed.

The facts, which involve the jurisdiction of this Court to review a judgment of the state court at the instance of

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a public official who has no personal interest in the litigation, are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

The case originated in a complaint filed in the Circuit Court of Marion County, Indiana, by John T. Dye, in which he alleged that he brought the suit for himself and other electors and taxpayers of the State of Indiana, the object of the suit being to enjoin the defendants, Thomas R. Marshall, Governor, Muter M. Bachelder, and Charles O. Roemler, jointly composing the State Board of Election Commissioners, and Lew G. Ellingham, Secretary of State, from taking the steps required by statute to certify and transmit to the clerks of the several counties in the

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state a new constitution proposed by the legislature of the state, and from printing and publishing a statement to be printed upon the ballots in such manner that the electors might indicate their choice as to such new constitution. Upon trial in the circuit court, an injunction was granted. Upon appeal to the Supreme Court of the State of Indiana, the judgment of the circuit court was affirmed. 99 N.E. 1. The case was then brought here by writ of error.

A motion was filed in this Court on September 24, 1913, accompanied by an affidavit, stating the death of John T. Dye, defendant in error, and the appointment of Hugh Dougherty as his executor, and his qualification as such, in compliance with the laws of the State of Indiana, and asking that he be permitted to appear and defend as such executor, which motion is granted.

There was also submitted on October 14, 1913, a motion to substitute Samuel M. Ralston, Governor, and Will H. Thompson and John E. Hollett, members of the State Board of Election Commissioners, of the State of Indiana, as plaintiffs in error. As the judgment in this case was against the defendants Thomas R. Marshall, Muter M. Bachelder, and Charles O. Roemler, composing the State Board of Election Commissioners, and their successors in office, and as such board is a continuing board (6897, 2 Burns' Annotated Indiana Statutes 1908) notwithstanding its change of personnel, this motion is within the principle laid down in *Murphy v. Utter,* 186 U. S. 95 , and is granted. *See also Richardson v. McChesney,* 218 U. S. 487 , 218 U. S. 492 -493. Lew G. Ellingham, Secretary of State, is one of the plaintiffs in error, and the judgment sought to be reviewed ran against him as such Secretary of State, and he still occupies that office.

The statute (Acts of 1911, p. 205) under which it was proposed to submit the new constitution of the state provided for its submission at the general election in

November, 1912, and required the election officials and other officers to perform like duties to those required at general elections with a view to the submission of such questions. The supreme court sustained the contention that the act was void under the state constitution, holding in substance that the Act of 1911 was unconstitutional for want of authority in the legislature to submit an entire constitution to the electors of the state for adoption or rejection, and that, if the instrument could be construed to be a series of amendments, it could not be submitted as such for the reason that Article 16 of the constitution of the state requires that all amendments to the state constitution shall, before being submitted to the electors, receive the approval of two general assemblies, which was not the case here, and that Article 16 further provides that, while an amendment or amendments to the constitution, which have been agreed upon by one general assembly, are awaiting the action of a succeeding general assembly or of the electors, no additional amendment or amendments shall be proposed, and that, as a matter of fact, another amendment was still awaiting the action of the electors.

The contention mainly urged by the plaintiffs in error of the denial of federal rights is that the judgment below is in contravention of Article IV, 4, of the Constitution of the United States, which provides that the United States shall guarantee to every state in the Union a republican form of government. In *Pacific Telephone Co. v. Oregon,* 223 U. S. 118 , this Court had to consider the nature and character of that section, and held that it depended for enforcement upon political and governmental action through powers conferred upon the Congress of the United States. The full treatment of the subject in that case renders further consideration of that question unnecessary, and the contention in this behalf presents no justiciable controversy concerning which the decision is

reviewable in this Court upon writ of error to the state court. *Equitable Life Assurance Society v. Brown,* 187 U. S. 308 , 187 U. S. 314 . And as to all questions said to be of a federal character, although the judgment of the supreme court was rested solely upon its interpretation of the state constitution, the rulings are assailed because of alleged wrongs done to the plaintiffs in error in their official capacity only.

We have had frequent occasion to declare that the right of this Court to review the judgment of the highest court of a state is circumscribed within the limits of 709 of the Revised Statutes, now 237 of the Judicial Code. *See Waters-Pierce Oil Co. v. Texas,* 212 U. S. 86 , and cases there cited. Among the limitations upon this right is the principle which requires those who seek to bring in review in this Court the judgment of a state court to have a personal, as distinguished from an official, interest in the relief sought and in the federal right alleged to be denied by the judgment of the state court. This principle was laid down in *Smith v. Indiana,* 191 U. S. 138 , in which it was held that the auditor of a county of the State of Indiana could not, upon writ of error to this Court, have the judgment of the Supreme Court of Indiana, declaring an exemption law of that state valid and the performance of its provisions obligatory upon him, reviewed upon the ground that the act was repugnant to the federal Constitution. The Court, Mr. Justice Brown delivering the opinion, said (p. 191 U. S. 149):

"It is evident that the auditor had no personal interest in the litigation. He had certain duties as a public officer to perform. The performance of those duties was of no personal benefit to him. Their nonperformance was equally so. He neither gained nor lost anything by invoking the advice of the supreme court as to the proper action he should take. He was testing the constitutionality of the law purely in the interest of third persons, *viz.,*

the taxpayers, and in this particular the case is analogous to that of *Caffrey v. Oklahoma,* 177 U. S. 346 . We think the interest of an appellant in this Court should be a personal, and not an official, interest, and that the defendant, having sought the advice of the courts of his own state in his official capacity, should be content to abide by their decision."

In *Braxton County Court v. West Virginia,* 208 U. S. 192 , it was held that, where the Supreme Court of West Virginia had compelled a county court by mandamus to lower its assessment so that it would be within the limit designated by a certain statute, this Court would not entertain a writ of error to review the judgment of the state court, although the plaintiff in error had set up that the assessment contended for would not provide a sufficient amount to pay the expenses of the county, part of which it was alleged had by contract attached before the statute in question was passed. Speaking for the Court, Mr. Justice Brewer said:

"That the Act of the state is charged to be in violation of the national Constitution, and that the charge is not frivolous, does not always give this Court jurisdiction to review the judgment of a state court. The party raising the question of constitutionality and invoking our jurisdiction must be interested in and affected adversely by the decision of the state court sustaining the act, and the interest must be of a personal, and not of an official, nature. *Clark v. Kansas City,* 176 U. S. 114 , 176 U. S. 118 ; *Lampasas v. Bell,* 180 U. S. 276 , 180 U. S. 283 ; *Smith v. Indiana,* 191 U. S. 138 , 191 U. S. 148 ."

In the present case, the supreme court of the state has enjoined the plaintiff in error, as officers of the state, from taking steps to submit the proposed constitution to the electors of the state because, in its judgment, the act of the legislature of the state requiring such submission was in violation of the state constitution. Whether this duty

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shall or shall not be performed concerns the plaintiffs in error in their official capacity only. The requirement that they refrain from taking such steps concerns their official, and not their personal, rights. Applying the rule established by the previous decisions of this Court, it follows the judgment of the state supreme court is not reviewable here, as it is not alleged to violate rights of a personal nature secured by the federal Constitution or laws.

It therefore follows that this writ of error must be

Dismissed.

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