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Court : US Supreme Court

Decided On : Nov-05-1917

Appeal No. : 245 U.S. 33

Appellant : Smith

Respondent : icc

Judgement :

Smith v. ICC - 245 U.S. 33 (1917)
U.S. Supreme Court Smith v. ICC, 245 U.S. 33 (1917)

Smith v. Interstate Commerce Commission

No. 337

Argued October 2, 3, 1917

Decided November 5, 1917

245 U.S. 33

APPEAL FROM THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

The Senate, by resolution, directed the Interstate Commerce Commission to investigate, take proof, and report to it, among other things, what amount, if any, certain railroad companies, or any of them, had subscribed, expended, or contributed to prevent other railroads from entering any of their territory, for maintaining political or legislative agents, for contributing to political campaigns, or for creating sentiment in favor of any of the plans of any of the railroads. In pursuance of this resolution, the Commission ordered an investigation, which was consolidated with another, arising from a complaint made by an individual and limited to the alleged improper issuance of free passes. At the hearing, the president of one of the companies, subpoenaed as a witness, was asked by the counsel for the Commission what, if any, funds his company expended, in certain states, in certain years, for political campaign purposes, and charged upon its books to operating or legal expenses or construction account; also to explain certain vouchers showing expenditures by the company but not the purpose; also whether the company expended funds in a certain state "in a campaign against rate reductions," and whether it was the company's policy to make political campaign contributions. The witness having refused to answer, upon advice of counsel, the court below, upon the petition of the Commission, ordered him to do so.

HELD

(1) That the investigation, particularly as related to and defined by the questions asked, was not to be regarded as directed to the political activities of the carrier or to its efforts to suppress competition, but as seeking to ascertain the amounts of expenditures made by the carrier, their allocation, and the manner in which they were charged upon its books.

(2) That such an investigation was within the competency of the Commission, and the questions proper, in view of the general purposes and objects of the Act to Regulate Commerce, the regulatory power of the Commission in relation thereto, and the particular authority and

mean given to enable it to perform its duty -- *viz.,* authority under 12 to inquire into the management of the business of carriers, keep itself informed as to the manner and method in which the same is being conducted, and to obtain from carriers full and complete information; under 13, to institute inquiries of its own motion; under 20, to require detailed account of the expenditures and revenues of carriers and exhibits of their financial operations, and that the questions were pertinent to the duty of the Commission under 21 to report information collected by it to Congress.

Under 13 of the Act to Regulate Commerce, as amended by the Act of June 18, 1910, c. 30, 36 Stat. 550, 11, the Commission's power of investigation is not necessarily confined to cases in which evils or abuse are definitely charged, and remedies are proposed, in words, either by the Commission or by parties complaining before it; nor, *semble,* is it right of inquiry in a particular proceeding necessarily to be measured by the scope of the proceeding as defined by the order instituting it.

44 W.L.Rep. 626 affirmed.

Petition of the Interstate Commerce Commission to require the attendance before it of appellant, president of the Louisville & Nashville Railroad Company, an interstate carrier, to answer certain questions theretofore asked him in a proceeding then pending before the Commission. The petition described the Commission as an administrative tribunal, and recited the powers conferred upon it by 1, 15, 12, 13, 20 and 21 of the Act of Congress to Regulate Commerce, approved February 4, 1887, as subsequently amended.

That by a resolution of the United States Senate of November 6, 1913, the Commission was directed to investigate, take proof, and report to the Senate as soon as practicable upon certain practices and financial relations of the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, and other carriers. The resolution was set out. Its twelfth paragraph is as follows:

"What amount, if any, the Louisville and Nashville Railroad, the Nashville, Chattanooga and St. Louis Railway, the Nashville and Decatur Railroad, and the Lewisburg

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and Northern Railroad, all or any of them, have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads, for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads."

The other paragraphs concern the relation of the railroads to one another, the control, if any, exercised by the Louisville & Nashville over the others by stock ownership, leases or arrangements, and whether, but for these, the roads would be competitive, and if, through such means, rates were fixed and maintained. The resolution is set out in full in *United States v. Louisville & Nashville R. Co.,* 236 U. S. 318 , 236 U. S. 324 .

That thereafter, the Commission instituted a proceeding in pursuance of such resolution, and it was ordered that the proceeding be set for hearing at such times and places, and that such persons be required to appear and testify or to produce books, documents, and papers as the Commission might thereafter direct, and that the investigation be carried on in the meantime by such other means and methods as might be deemed appropriate. A copy of the order was served on the Louisville & Nashville and other railroads.

That subsequently, on March 20, 1916, the order of the Commission was amended by adding to the order the provision that, after the hearings and investigations authorized, the Commission might issue such order or orders in the matter as might be proper and necessary in the premises, and that case No. 8488, Luke Lea v. Louisville & Nashville Railroad Co. *et al.,* be consolidated for hearing with the proceeding upon one record at such times and places as the Commission might direct. Copies of the order and original order were served on the railroads.

That, pursuant to such orders, a meeting was had April

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27, 1916, and, pursuant to adjournment, resumed in the City of Washington May 4, 1916. At such hearings, appellant appeared in response to a subpoena and certain questions were addressed to him.

He testified that there was no connection between the reckless dissipation of the funds of a railroad in political campaigns and the adjustment of reasonable rates, even if the contribution was of the sum of $500,000 or $20,000,000, as the adjustment of rates is governed by conditions entirely independent of the revenues of a railroad. In illustration, he adduced the adjustment of rates of bankrupt roads operated by receivers of courts, which he testified are handled in the same way and arrived at in the same manner as they are by solvent roads.

The following questions were then asked him by counsel for the Commission, omitting those not now relevant. We number them for convenience of reference:

"1. I will ask you, Mr. Smith, if you know of any funds of the Louisville & Nashville Railroad expended in Tennessee for political campaign purposes during the year 1915 and charged upon the books of that carrier to operating expenses."

"2. Can you tell us what funds of the Louisville & Nashville Railroad Company were expended in the State of Alabama during the years 1912 and 1913 for political campaign purposes and charged on the books of that carrier to operating expenses or to construction account?"

"3. Can you tell us of your own knowledge whether these expenditures of the funds of the Louisville & Nashville Railroad Company for political purposes were charged in the operating expense account or construction account of either the Louisville & Nashville Railroad Company or the Nashville, Chattanooga & St. Louis Railway? Can you tell us whether these expenditures were charged on the books of the Louisville & Nashville Railroad to legal expenses? "

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"4. Among the vouchers in the files of the Louisville & Nashville Railroad, found by the examiners of the Interstate Commerce Commission, there appears one, No. 2282, February, 1910, in favor of the Columbia Trust Company for $20,715.06 for special fees paid under the direction of the president. The examiners were refused all information regarding this voucher. Can you tell us what it was about and what the voucher was for?"

"5. Can you tell us why the entry in reference to this $20,000 voucher was made in such a way as to give no information as to the purpose of this expenditure?"

"6. Among the vouchers found by the accountants for the Commission in the files of the Louisville & Nashville Railroad, appears one numbered 391, dated May 5, 1907, in favor of the National Bank of Commerce, for $15,000 issued for certain expenditures authorized by the president. All further information was refused the accountants. The books give no further information. Can you advise us or enlighten us as to the purposes of this $15,000 voucher?"

"7. Did the Louisville & Nashville Railroad Company, through you or by your direction, expend approximately $34,800 in Alabama through the Johnson-Dallas Agency in a campaign against rate reductions as advocated by former Governor Comer of that state?"

"8. Have you personal knowledge of any funds of the Louisville & Nashville Railroad Company expended in Alabama through the Johnson-Dallas Agency in a campaign against rate reduction?"

"9. Is it the policy of the Louisville & Nashville Railroad Company to make political campaign contributions, if you know?"

All of the questions the witness declined to answer upon the advice of counsel.

The answer of appellant to the petition challenged in general and in detail the power of the Commission, and

urged that the Commission is entirely a ministerial tribunal, having only the powers given it by act of Congress, and that those, with few exceptions, are confined to the enforcement of the act, and that the latter, as amended,

"does not attempt to regulate the politics or the political activities of common carriers, nor the subject of their endeavoring to exclude competitors from their territories."

That the object of the questions asked by the Commission "was to delve into questions purely political" and to ascertain whether the witness or the company believed that a railroad company had a right to engage in political campaigns and to make political contributions, and whether it had been the policy of the company to make contributions of funds to such campaigns, and whether the company had in the past engaged in such practices. It is asserted that all such matters are outside of the jurisdiction of the Commission.

That the proceeding is a consolidation of two proceedings, Nos. 6319 and 8488, that Luke Lea is the open and sole complainant in the latter and the instigator and real complainant in the other, which was instituted by the Commission without there being a nominal complainant, but pursuant to a resolution of the United States Senate introduced by Lea, then a member of the Senate and the complainant in No. 8488, which is confined to an alleged improper issue of free passes.

Certain activities of Lea are stated, and certain resentments and motives of his are urged as having actuated him, and a want of power upon the part of the Commission is repeated, and the refusal to answer the questions hence asserted to be justified.

The Commission moved to strike out certain portions of the answer, which was denied.

The court required appellant to answer the questions, and from its order this appeal is prosecuted.

MR. JUSTICE Mc KENNA, after stating the case as above, delivered the opinion of the Court.

The fundamental contention of appellant is that the Interstate Commerce Commission has no power to ask the questions in controversy, and in emphasis of this, he asserts "the inquiry was confined exclusively to supposed political activities and efforts to suppress competition." And these, it is further asserted, "are not matters which the Commission *is legally entitled to investigate.'" The contention is attempted to be supported by the insistence that the investigation was provoked and prosecuted solely in obedience to the Senate resolution, and neither in exercise of the judgment of the Commission nor in pursuance of a complaint made to it. And the twelfth paragraph of*

the resolution is dwelt upon as directing and controlling the inquiry as to what amount, if any, the railroads

"have subscribed, expended, or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads, for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads."

If, however, we advert to the questions, we observe that the matters dwelt on by appellant are incidents only, having the purpose, it may be, in one sense to ascertain the "amount, if any," subscribed or expended, but not having the purpose in the sense of the questions, which is whether the amount subscribed or expended was charged to operating or legal expenses. The latter purpose is more special than the other, and, we may say in passing, does not necessarily involve even a criticism of the other, involves only the display in the accounts of the carriers of the amount expended and its allocation. To this limitation the investigation is reduced, and the question is, being so reduced, is it within the

powers of the Commission?

The Interstate Commerce Act confers upon the Commission powers of investigation in very broad language, and this Court has refused by construction to limit it so far as the business of the carriers is concerned and their relation to the public. [Footnote 1] And it would seem to be a necessary deduction from the cases that the investigating and supervising powers of the Commission extend to all of the activities of carriers and to all sums expended by them which could affect in any way their benefit or burden as agents

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of the public. If it be grasped thoroughly and kept in attention that they are public agents, we have at least the principle which should determine judgment in particular instances of regulation or investigation, and it is not far from true -- it may be it is entirely true, as said by the Commission -- that "there can be nothing private or confidential in the activities and expenditures of a carrier engaged in interstate commerce."

Turning to the specialties of the Interstate Commerce Act, we find there that all charges and treatment of all passengers and property shall be just and reasonable, and there is a specific prohibition of preferences and discriminations in all the ways that they can be executed, with corresponding regulatory power in the Commission. And authority and means are given to enable it to perform its duty. By 12, it is authorized to inquire into the management of the business of carriers and keep itself informed as to the manner and method in which the same is conducted, and has the right to obtain from the carriers full and complete information. It may (13) institute an inquiry of its own motion, and may (20) require detailed accounts of all the expenditures and revenues of carriers and a complete exhibit of their financial operations, and prescribe the forms of accounts, records, and memoranda to be kept. And it is required to report to Congress all data collected by it.

It would seem to be an idle work to point out the complete comprehensiveness of the language of these sections, and we are not disposed to spend any time to argue that it necessarily includes the power to inquire into expenditures and their proper assignment in the accounts, and the questions under review, we have seen, go no further. They are incidental to an investigation as to the "manner and method" (12) in which the business of the carriers is conducted; they are in requisition of a detailed account of their expenditures and revenues and an exhibit of their

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financial operations (20), and the answers to them may be valuable as information to Congress (21).

A limitation, however, is deduced from 13. It is said to be confined to cases where an inquiry is instituted "as to any matter or thing concerning which a complaint is authorized to be made, or concerning which any question may arise under any provisions" of the act "or relating to the enforcement of any of the provisions" of the act. In other words, that the inquiry is determined by the manner of procedure. The objection overlooks the practical and vigilant function of the Commission. To sustain it, appellant seems to urge that there must be put into words by some complainant or by the Commission, if it move of itself, some definite charge of evil or abuse, and put into expression some definite remedy, and that an inquiry must not transcend either charge or remedy. To so transcend, appellant urges, would be an exercise of autocratic power, and is condemned in *Harriman v. Interstate Commerce Commission,* 211 U. S. 407 .

Appellant presses that case beyond its principle. And we may observe that 13 has been amended and broadened since the decision of that case. [Footnote 2] The inquiry in the present case is more immediate to the function of the

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Commission than the inquiry, in that and comes within *Interstate Commerce Commission v. Chicago, R.I. & Pac. Ry., supra,* where it was said, at p. 218 U. S.

103 :

"The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it, therefore, are complex and difficult, the means of solving them are as great and adequate as can be provided."

And they must necessarily be expressed in generalities. A precise specification of powers might work a limitation, and all not enumerated be asserted to be withheld.

We find it difficult to treat counsel's argument as seriously as they urge it. The expenditures of the carriers essentially concern their business. Section 20 declares it, and gives the Commission power to require a detail of them, and necessarily not only of their amount, but purpose and how charged. And the Commission must have power to prevent evasion of its orders and detect in any formal compliance or in the assignment of expenses a "possible concealment of forbidden practices."

It may be said that our comments are not applicable to questions numbered 7 and 8, which relate to the expenditure of money in Alabama "in a campaign against rate reduction." That is, those questions are not directed to "political activities" strictly so called, nor to the suppression of competition. They are directed, however, to the use of funds in a campaign against state legislative action. But this, appellant asserts, is, at the farthest, an attempt to "influence legislation or to mold public opinion" and that there is nothing in the Interstate Commerce Act "which forbids it or gives to the Commission any power to investigate the subject." And it is besides urged, as it is urged against the other questions, that they do not relate to "the subject under investigation,"

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which is strictly defined by the Senate resolution, to which, it is contended, the order of the Commission was responsive and subservient, and was to be and is confined to the efforts simply "of the railroad companies in political matters and in

attempts to suppress competition." Indeed, the servility of the Commission to the Senate's resolution is the basic and insistent contention of appellant, and taints, he further contends, all that the Commission did.

The contention ascribes too much dominance to the resolution, and puts out of view or unduly subordinates the invocation of the powers of the Commission by the complaint of Lea and the interval of two years between it and the resolution, and puts out of view besides the independent and inherent powers of the Commission to which we have adverted.

Abstractly speaking, we are not disposed to say that a carrier may not attempt to mold or enlighten public opinion, but we are quite clear that its conduct and the expenditures of its funds are open to inquiry. If it may not rest inactive and suffer injustice, it may not, on the other hand, use its funds and its power in opposition to the policies of government. Beyond this generality it is not necessary to go. The questions in the case are not of broad extent. They are quite special, and we regard them, as the learned judge of the court below regarded them, as but incident to the amount of expenditures and to the manner of their charge upon the books of the companies. This, we repeat, is within the power of the Commission. The purpose of an investigation is the penetration of disguises, or to form a definite estimate of any conduct of the carriers that may in any way affect their relation to the public. We cannot assume that an investigation will be instituted or conducted for any other purpose, or in mere wanton meddling.

Order affirmed.

[Footnote 1]

Wilson v. New, 243 U. S. 332 ; *Interstate Commerce Commission v. Baird,* 194 U. S. 25 ; *Interstate Commerce Commission v. Goodrich Transportation Co.,* 224 U. S. 194 ; *United States v. White Star Line,* 224 U. S. 194 ; *Hale v. Henkel,* 201 U. S. 43 ; *Interstate Commerce Commission v. Chicago, R.I. & Pac. Ry. Co.,* 218 U. S. 88 .

[Footnote 2]

Prior to the decision, 13 read as follows:

"Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or Railroad Commission of any state or territory at the request of such commissioner or Commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made."

After the decision, the section was amended to read as follows:

". . . and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act."

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