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Court : US Supreme Court

Decided On : Apr-13-1925

Appeal No. : 267 U.S. 552

Appellant : Chas. Wolff Packing Co.

Respondent : Court of Indus. Rel.

Judgement :

Chas. Wolff Packing Co. v. Court of Indus. Rel. - 267 U.S. 552 (1925)
U.S. Supreme Court Chas. Wolff Packing Co. v. Court of Indus. Rel., 267 U.S. 552 (1925)

Chas. Wolff Packing Company v. Court of Industrial Relations

Nos. 207 & 299

Argued Nov. 20, 1924

Decided April 13, 1925

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ERROR TO THE SUPREME COURT

OF THE STATE OF KANSAS

SYLLABUS

1. When a judgment entered by a state court is modified by another entered after a rehearing, the second supersedes the first, and a writ of error to the second alone is proper for review in this Court. P. 267 U. S. 561 .

2. A decision of a state supreme court that provisions of a statute of the state are separable is conclusive on this Court in the case. P. 267 U. S. 562 .

3. A judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided.

Held that the former decision of this Court in this case (262 U.S. 522) holding the Kansas Industrial Relations Act unconstitutional insofar as it permitted the fixing of wages in plaintiff in error's packing plant, and reversing the judgment of the Kansas Supreme Court for that reason, was neither an adjudication that the entire act was invalid nor an adjudication that its provisions for fixing hours of labor were valid. P. 267 U. S. 562 .

4. The Industrial Relations Act of Kansas, which seeks to promote continuity of operation and production in the industries to which it relates by compelling employer and employees to submit their controversies to compulsory settlement by a state agency is, as applied to a manufacturer of food products, unconstitutional not only so far as it permits compulsory fixing of wages (as previously decided, 262 U. S. 262 U.S. 522), but also, and for the same reasons, in the provision for compulsory fixing of hours of labor, since the compulsion in both these features alike is but part of a system by which the act seeks to compel owner and employees to continue in business on terms not of their own making, which infringes the rights of property and liberty of contract guaranteed by the due process of law clause of the Fourteenth Amendment. P. 267 U. S. 563 .

5. Whether a power conferred on a state agency to fix hours of labor would be valid if it were conferred independently, and made either general or applicable to all business of a particular class, is not considered. P. 267 U. S. 569 .

114 Kans. 304, 487, reversed.

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Error to a judgment of the Supreme Court of Kansas entered, upon rehearing, after receipt of the mandate issued from this Court upon a previous reversal, 262 U. S. 262 U.S. 522. The judgment awarded a mandamus to compel obedience to an order of the Kansas administrative agency called the Court of Industrial Relations insofar as it purported to fix the hours of labor and pay for over time in the meat packing plant of the plaintiff in error.

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MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

This was an original proceeding in mandamus in the Supreme Court of Kansas to compel the Wolff Packing Company to put into effect an order of a state agency, called the Court of Industrial Relations, determining a dispute respecting wages, hours, labor, and working conditions in a slaughtering and packing plant owned and operated by the company. The order was made in a compulsory proceeding under a Kansas statute, called the Industrial Relations Act, Laws Special Session 1920, c. 29, and consisted of 19 distinct paragraphs -- some fixing wages, some fixing hours of labor and pay for overtime, and others prescribing working conditions. After a hearing,

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the supreme court eliminated the paragraphs relating to working conditions, because made without the required notice, and awarded a peremptory writ of mandamus commanding obedience to the other paragraphs. *Court of Industrial Relations v. Charles Wolff Packing Co.,* 109 Kan. 629, 111 Kan. 501. That judgment was brought to this Court for review, and was reversed, with a direction that the case be remanded for further proceedings not inconsistent with the opinion rendered at the time. 262 U. S. 262 U.S. 522. After receiving the

mandate, the state court vacated its original judgment, eliminated the paragraphs relating to working conditions and those fixing wages, also eliminated from the paragraphs fixing hours of labor the clauses relating to pay for overtime, and awarded a peremptory writ of mandamus commanding obedience to what remained of the last paragraphs. *Court of Industrial Relations v. Charles Wolff Packing Co.,* 114 Kan. 304. On a rehearing, the court modified that judgment by awarding a peremptory writ of mandamus to compel obedience to the paragraphs fixing hours of labor, including the clauses relating to pay for overtime. 114 Kan. 487. The paragraphs to which obedience was thus finally commanded are as follows:

"3. A basic working day of eight hours shall be observed in this industry, but a nine-hour day may be observed not to exceed two days in any one week without penalty: *Provided, however,* that, if the working hours of the week shall exceed 48 in number, all over 48 shall be paid for at the rate of time and one-half; furthermore, in case a day in excess of the eight-hour day shall be observed more than two days in any one week, all over eight hours, except for said two days in said week, shall be paid for at the rate of time and one-half, even though the working hours of the week may be forty-eight hours or fewer."

"14. Workers paid by the week or day, if employed within the plant and not within the office or sales department, shall be subject to hours of work and overtime

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as other employees under the terms of finding No. 3 hereof."

"19. In departments operating twenty-four hours a day and seven days a week, each employee therein shall be entitled to one day off each week. In other departments, work performed on Sunday and legal holidays shall be paid for at the rate of time and one-half."

The order, according to its terms, was to remain in force until changed by the Court of Industrial Relations or by agreement of the parties with the approval of that agency.

The company has brought the case here again, this time on two writs of error. One covers the judgment first entered after receipt of the mandate of this Court, and the other covers the judgment entered on the rehearing. The first of these writs can serve no purpose, and must be dismissed. The rehearing was seasonably requested, and the judgment entered thereon became the final judgment, the other being superseded by it.

Throughout the mandamus proceedings, the company insisted that the Industrial Relations Act, on which the order was based, was in conflict with the provision of the Fourteenth Amendment that no state shall deprive any person of liberty or property without due process of law. This insistence was wholly rejected when the original judgment, heretofore reversed, was rendered, and was largely rejected when the judgment on the rehearing was given.

When the case was first before this Court, the discussion at the bar and in the briefs chiefly related to the validity of the parts of the act permitting the fixing of wages, and the opinion then delivered particularly dealt with that question, the ultimate conclusion, as expressed therein, being:

"We think the Industrial Court Act, insofar as it permits the fixing of wages in plaintiff in error's packing

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house, is in conflict with the Fourteenth Amendment, and deprives it of its property and liberty of contract without due process of law."

That conclusion, without more, required a reversal of the judgment of the state court. The parts of the act permitting the fixing of hours of labor were not specially dealt with, and were not affected by the decision, save as the reasons on which it proceeded might be applicable to them. The reversal was with a direction that the case be remanded for further proceedings not inconsistent with this Court's decision, and therefore the mandate operated particularly to require that the parts of the act permitting the fixing of wages be regarded as invalid.

In the proceedings which followed the receipt of the mandate, the state court held that the other parts of the Act were separable from those permitting the fixing of wages, and also pronounced them constitutional. As the question of separability was a state question, the decision of that court thereon is conclusive here. *Dorchy v. Kansas,* 264 U. S. 286 ; *Hallanan v. Eureka Pipe Line Co.,* 261 U. S. 393 , 261 U. S. 397 . The decision on the constitutional question is all that we can review.

Both parties rely on our decision when the case was first here. One insists that, by reversing the original judgment of the state court, and not merely a part of it, we adjudged the invalidity of the entire Act, and the other that, by particularly declaring the provisions permitting the fixing of wages invalid and saying nothing about the provisions permitting the fixing of hours of labor, we impliedly held the latter valid. Both contentions are wrong. "A judgment of reversal is not necessarily an adjudication by the appellate court of any other than the questions in terms discussed and decided." *Mutual Life Insurance Co. v. Hill,* 193 U. S. 551 , 193 U. S. 553 .

The company next contends that the decision, even though not in terms determining the question of the validity

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of the provisions permitting the fixing of hours of labor, recognized and gave effect to principles which are applicable to that question and if applied will solve it. A survey of the Act and of the decision will show that this contention is well taken.

The declared and adjudged purpose of the Act is to insure continuity of operation and production in certain businesses which it calls "essential industries." To that end, it provides for the compulsory settlement by a state agency of all labor controversies in such businesses which endanger the intended continuity. It proceeds on the assumption that the public has a paramount interest in the subject which justifies the compulsion. The businesses named include, among others, that of manufacturing or preparing food products for sale and human consumption. The

controversies to be settled include, among others, those arising between employer and employees over either wages or hours of labor. The state agency charged with the duty of making the settlement is the Court of Industrial Relations. Although called a court, it is an administrative board. It is to summon the disputants before it, to give them a hearing, to settle the matter in controversy, as by fixing wages or hours of labor, where they are what is in dispute, to embody its findings and determination in an order, and, if need be, to institute mandamus proceedings in the supreme court of the state to compel compliance with its order. The order is to continue in effect for such reasonable time as the agency may fix, or until changed by agreement of the parties with its approval. The employer may discontinue the business (a) where it can be conducted conformably to the order only at a loss; or (b) where for good cause shown the agency approves, and individual employees may quit the service in the exercise of a personal privilege, but may not induce others to quit or combine with them to do so. With these qualifications, both employer

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and employees are required to continue the business on the terms fixed in the order; violations and evasions being penalized. The authority given to the agency to fix wages or hours of labor is not general, nor is it to be exerted independently of the system of compulsory settlement. On the contrary, it is but a feature of that system, and correspondingly limited in purpose and field of application. No distinction is made between wages and hours of labor; both are put on the same plane. In the fixing of wages, regard is to be had for what is fair between employer and employees, and, in the fixing of hours of labor, regard is to be had for what are healthful periods; but neither is to be fixed save in the compulsory adjustment of an endangering controversy to the end that the business shall go on.

The following excerpt from the opinion of the supreme court of the state in *State ex rel. v. Howat,* 109 Kan. 376, 417, explains the pervading theory of the Act:

"Heretofore, the industrial relationship has been tacitly regarded as existing between two members -- industrial manager and industrial worker. They have

joined wholeheartedly in excluding others. The legislature proceeded on the theory there is a third member of those industrial relationships which have to do with production, preparation, and distribution of the necessaries of life -- the public. The legislature also proceeded on the theory the public is not a silent partner. Whenever the dissensions of the other two become flagrant, the third member may see to it the business does not stop."

On three occasions when the Act was before us, we referred to it as undertaking to establish a system of "compulsory arbitration." *Howat v. Kansas,* 258 U. S. 181 , 258 U. S. 184 ; *Wolff Packing Co. v. Court of Industrial Relations,* 262 U. S. 522 , 262 U. S. 542 ; *Dorchy v. Kansas,* 264 U. S. 286 , 264 U. S. 288 . The supreme court of the state, in a recent opinion, criticizes this use of the term "arbitration."

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State v. Howat, 116 Kan. 412, 415. We recognize that, in its usual acceptation, the term indicates a proceeding based entirely on the consent of the parties. And we recognize also that this Act dispenses with their consent. Under it, they have no voice in selecting the determining agency, or in defining what that agency is to investigate and determine. And yet the determination is to bind them, even to the point of preventing them from agreeing on any change in the terms fixed therein unless the agency approves. To speak of a proceeding with such attributes merely as an arbitration might be subject to criticism, but we think its nature is fairly reflected when it is spoken of as a compulsory arbitration. Of course, our present concern is with the essence of the system, rather than its name. In this connection, it is well to observe that, in the opinion last mentioned, the state court recognizes that the system, while intended to be just between employer and employees, proceeds on the theory that the public interest is paramount, as was explained in *State ex rel. v. Howat, supra.*

The survey just made of the Act, as construed and applied in the decisions of the supreme court of the state, shows very plainly that its purpose is not to regulate wages or hours of labor either generally or in particular classes of business, but to

authorize the state agency to fix them where, and insofar as, they are the subjects of a controversy the settlement of which is directed in the interest of the public. In short, the authority to fix them is intended to be merely a part of the system of compulsory arbitration, and to be exerted in attaining its object, which is continuity of operation and production.

When the case was first here, the question chiefly agitated, and therefore discussed and decided, was whether the authority to fix wages as an incident of the compulsory arbitration could be applied to a business like that of the Wolff Company consistently with the protection

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which the due process of law clause of the Fourteenth Amendment affords to the liberty of contract and rights of property. The question was answered in the negative, and the Act was held invalid insofar as it gives that authority. The subject was much considered, and the principles which were recognized and applied were distinctly stated.

At the outset, the court pointed out that the Act assumes as a "necessary postulate" that the state, in the interest of the public,

"may compel those engaged in the manufacture of food, and clothing, and the production of fuel, whether owners or workers, to continue in their business and employment on terms fixed by an agency of the state if they cannot agree."

Then, after referring to the limited privilege of withdrawing from the business or employment which the Act accords to owners and employees who may be dissatisfied with the determination, the Court said:

"These qualifications do not change the essence of the Act. It curtails the right of the employer on the one hand, and of the employee on the other, to contract about his affairs. This is part of the liberty of the individual protected by the guaranty of the due process clause of the Fourteenth Amendment. *Meyer v. Nebraska, ante,* 262 U. S. 390 . While there is no such thing as absolute freedom of contract, and

it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule, and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances. *Adkins v. Children's Hospital,* 261 U. S. 525 ."

Various matters which were relied on as justifying the attempted restraint or abridgment were considered and pronounced inadequate. Among them was the assumption in the Act that a business like that in question -- preparing food for sale and human consumption -- is so far

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affected with a public interest that the state may compel its continuance, and, if the owner and employees cannot agree, may fix the terms through a public agency to the end that there shall be continuity of operation and production. This assumption was held to be without any sound basis, and its indulgence by the state legislature was declared not controlling. The court recognized that, in a sense, all business is of some concern to the public, and subject to some measure of regulation, but made it plain that the extent to which regulation reasonably may go varies greatly with different classes of business, and is not a matter of legislative discretion solely, but is a judicial question to be determined with due regard to the rights of the owner and employees. Care was taken to point out that operating a railroad, keeping an inn, conducting an elevator, and following a common calling are not all in the same class, and particularly to point out the distinctions between a *quasi* - public business conducted under a public grant imposing a correlative duty to operate, a business originally private which comes to be affected with a public interest through a change *in pais,* and a business which not only was private in the beginning but has remained such. The conclusion was that power to compel the continuance of a business because affected with a public interest is altogether exceptional. On this subject, the Court said:

"An ordinary producer, manufacturer, or shopkeeper may sell or not sell as he likes (*United States v. Trans-Missouri Freight Association,* 166 U. S. 290 , 166 U. S. 320 ; *Terminal Taxicab Co. v. District of Columbia,* 241 U. S. 252 , 241 U.

S. 256), and while this feature does not necessarily exclude businesses from the class clothed with a public interest (*German Alliance Insurance Co. v. Lewis,* 233 U. S. 389), it usually distinguishes private from *quasi* -public occupations. . . ."

"It involves a more drastic exercise of control to impose limitations of continuity growing out of the public

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character of the business upon the employee than the employer, and, without saying that such limitations upon both may not be sometimes justified, it must be where the obligation to the public of continuous service is direct, clear, and mandatory, and arises as a contractual condition express or implied of entering the business either as owner or worker. It can only arise when investment by the owner and entering the employment by the worker create a conventional relation to the public somewhat equivalent to the appointment of officers and the enlistment of soldiers and sailors in military service. . . ."

"The penalties of the Act are directed against effort of either side to interfere with the settlement by arbitration. Without this joint compulsion, the whole theory and purpose of the Act would fail. The state cannot be heard to say, therefore, that, upon complaint of the employer, the effect upon the employee should not be a factor in our judgment. . . ."

"The power of a legislature to compel continuity in a business can only arise where the obligation of continued service by the owner and its employee is direct, and is assumed when the business is entered upon. A common carrier which accepts a railroad franchise is not free to withdraw the use of that which it has granted to the public. It is true that, if operation is impossible without continuous loss (*Brooks-Scanlon Co. v. Railroad Commission,* 251 U. S. 396 ; *Bullock v. Railroad Commission,* 254 U. S. 513), it may give up its franchise and enterprise, but, short of this, it must continue. Not so the owner [in another field] when, by mere changed conditions, his business becomes clothed with a public interest. He may stop at will, whether the business be losing or profitable."

Applying these principles, the Court was of opinion that the business in question is one which the state is without power to compel the owner and employees to continue.

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On further reflection, we regard the principles so stated and applied as entirely sound. They are as applicable now as they were then. The business is the same, and the parties are the same. So we reach the same conclusion now that we reached then.

The system of compulsory arbitration which the Act establishes is intended to compel, and if sustained will compel, the owner and employees to continue the business on terms which are not of their making. It will constrain them not merely to respect the terms if they continue the business, but will constrain them to continue the business on those terms. True, the terms have some qualifications, but, as shown in the prior decision, the qualifications are rather illusory, and do not subtract much from the duty imposed. Such a system infringes the liberty of contract and rights of property guaranteed by the due process of law clause of the Fourteenth Amendment.

"The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect."

Meyer v. Nebraska, 262 U. S. 390 , 262 U. S. 399 .

The authority which the Act gives respecting the fixing of hours of labor is merely a feature of the system of compulsory arbitration, and has no separate purpose. It was exerted by the state agency as a part of that system, and the state court sustained its exertion as such. As a part of the system, it shares the invalidity of the whole. Whether it would be valid had it been conferred independently of the system and made either general or applicable to all businesses of a particular

class we need not consider, for that was not done.

It follows that the state court should have declined to give effect to any part of the order of the state agency.

No. 207. Writ of error dismissed.

No. 299. Judgment reversed.