Fort Smith Light and Traction Co. Vs. Board of Improvement

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Court : US Supreme Court

Decided On : May-16-1927

Appeal No. : 274 U.S. 387

Appellant : Fort Smith Light and Traction Co.

Respondent : Board of Improvement

Judgement :

Fort Smith Light & Traction Co. v. Board of Improvement - 274 U.S. 387 (1927) U.S. Supreme Court Fort Smith Light & Traction Co. v. Board of Improvement, 274 U.S. 387 (1928)

Fort Smith Light and Traction Company v. Board of

Improvement of Paving District No. 16 of Fort Smith

No. 269

Submitted March 17, 1927

Decided May 16, 1927

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ERROR TO THE SUPREME COURT

OF THE STATE OF ARKANSAS

SYLLABUS

1. Under the power reserved by the Arkansas Constitution to alter any corporate charter, the legislature may require a street railway which has surrendered its franchise for an indeterminate permit to pave the streets between its rails. P. 274 U. S. 389 .

2. Such exercise of a reserved power to amend corporate charters by a requirement which might have been in the original charter and has some reasonable relation to the object of the grant and the duty of the state to maintain the highways is consistent with the Due Process Clause of the Fourteenth Amendment. P. 274 U. S. 390 .

3. The imposition of burdens, otherwise legitimate, upon a public service company cannot be held invalid as confiscatory because it is operating at rates which do not allow an adequate return. P. 274 U. S. 390 .

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4. A state law requiring the street railway in a particular municipality to do paving not required of other street railway elsewhere in the state not shown to be similar to it with respect to the location, use, and physical character of the street occupied by them is not a denial of the equal protection of the laws. P. 274 U. S. 391 .

5. The Fourteenth Amendment does not require the uniform application of legislation to objects that are different where those differences may be made the rational basis of legislative discrimination. P. 274 U. S. 391 .

169 Ark. 690 affirmed.

Error to a judgment of the Supreme Court of Arkansas which affirmed a judgment recovered by the Improvement Paving District in its action against the Traction Company. The judgment was for the amount expended by the plaintiff for street

paving which defendant had declined to perform though required by statute.

MR. JUSTICE STONE delivered the opinion of the Court.

Defendant in error, a board of improvement incorporated by the State of Arkansas, brought suit in the Circuit Court of Sebastian County to recover the cost of paving a part of certain streets in Ft. Smith, Arkansas, occupied by the street railway of plaintiff in error. Plaintiff in error originally operated its railway under a franchise requiring it to do similar paving and limiting it to a maximum fare of 5 cents per passenger. Availing of the permission granted by No. 571 of the Acts of Arkansas 1919, amended by No. 124 of 1921, the company had surrendered in that year its franchise for an indeterminate permit to operate its road. The permit did not fix a maximum fare or require the railway to pave

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parts of the streets occupied by its tracks, but subjected it to the regulatory powers of a utilities commission.

In 1923, the legislature passed a statute, Acts of Arkansas 1923, No. 680, requiring plaintiff in error, under certain conditions which have occurred, to pave the streets between its rails to the end of the ties. In the event of its failure to do so, the improvement district was authorized to do the paving at the expense of the railway. The act is in form a general statute, but, by reason of provisions making it applicable to street railways operating under indeterminate permits in cities of the first class other than in Miller County, it in fact applied to plaintiff in error alone.

Plaintiff in error having failed to do the required paving, the board completed the improvement and brought the present suit. The company by answer set up that the statutory requirements of paving impaired the obligation of its contract with the state in violation of article I, 10 of the federal Constitution, and deprived it of property without of the laws guaranteed by the Fourteenth of the laws guaranteed by the Fourteenth Amendment. The judgment of the circuit court for defendant in error was affirmed by the supreme court of the state. 169 Ark. 690. The case is here on writ of error. Judicial Code, 237, as amended.

It is urged that the acceptance of the indeterminate permit under the act of 1919 constituted a contract between the railway and the state by which the state bound itself not to impose any added burdens except in the exercise of its police power; that the requirement for street paving was not an exercise of the police power, and was therefore a forbidden impairment of the contract. This contention assumes that the permit exempted the railway from paving costs. But no such exemption appears in the permit. Provisions of this character are not lightly to be read into a contract between a state and a

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public utility. *Durham Public Service Co. v. Durham,* 261 U. S. 149 , 261 U. S. 152 . Even granting the assumption, the case of *Fair Haven R. Co. v. New Haven,* 203 U. S. 379 , is a complete answer. There, this Court held that a general law imposing on a street railway the duty to repair so much of the streets as was occupied by its tracks was an exercise of the power reserved to the state to alter, amend, or repeal the original charter, and was not an impairment of the obligation of contract. That case controls here, since 6, Art. XII, of the Constitution of Arkansas, in force at the time when plaintiff relinquished its franchise and accepted the permit, reserved to the legislature the power to alter any corporate charter. *See also Sioux City Street Ry. v. Sioux City,* 138 U. S. 98 .

Assuming the exercise of the power of amendment is subject to the limitation of the due process clause of the Fourteenth Amendment, *Shields v. Ohio,* 95 U. S. 319 , 95 U. S. 324 ; *Stanislaus County v. San Joaquin Co.,* 192 U. S. 201 , 192 U. S. 213 , that limitation, as was held in *Fair Haven R. Co. v. New Haven, supra,* is not transcended by a requirement which might have been included in the original charter and which has some reasonable relation to the object of the grant and to the duty of the state to maintain its highways. *Cf. Southern Wisconsin Ry. v. Madison,* 240 U. S. 457 ; *Great Northern Ry. v. State ex rel. Clara City,* 246 U. S. 434 .

It is said that the act, in its application, is confiscatory because plaintiff in error must bear this expense although it is losing money in the operation of its road at

the rates for service now prevailing. But the imposition of burdens, otherwise legitimate, upon a public service company cannot be held invalid as confiscatory because the permitted rate does not allow an adequate return. *People ex rel. Woodhaven Gaslight Co. v. Public Service Commission,* 269 U. S. 244 ; *Milwaukee Elec. Ry. v. State ex rel. Milwaukee,* 252 U.S.

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100, 252 U. S. 105 . Whether the rate is confiscatory is not before us.

It is also contended that, as there are other street railways in the state, some operating under franchises and one under an indeterminate permit, which are not required to do street paving, the challenged act denies the equal protection of the laws. The Fourteenth Amendment does not prohibit legislation merely because it is special or limited in its application to a particular geographical or political subdivision of the state. *See Missouri v. Lewis,* 101 U. S. 22 , 101 U. S. 31 ; *Missouri Ry. v. Mackey,* 127 U. S. 205 , 127 U. S. 209 ; *Mason v. Missouri,* 179 U. S. 328 ; *Mallett v. North Carolina,* 181 U. S. 589 ; *Hayes v. Missouri,* 120 U. S. 68 . *Cf. Walston v. Nevin,* 128 U. S. 578 ; *Williams v. Eggleston,* 170 U. S. 304 ; *Condon v. Maloney,* 108 Tenn. 82; *Owen v. Sioux City,* 91 Iowa 190; *Strange v. Board,* 173 Ind. 640; *Tenement House Dept. v. Moeschen,* 179 N.Y. 325; *People ex rel. Armstrong v. Warden,* 183 N.Y. 223; *State ex rel. Wixon v. Cleveland,* 164 Wis. 189; *Davis v. State,* 68 Ala. 58. *But cf. state ex rel. Johnson v. Chicago, Burlington & Quincy R. Co.,* 195 Mo. 228. If a state may delegate to a municipality power to require paving by a street railway located within its limits, *Durham Public Service Co. v. Durham, supra,* we perceive no reason why it may not, by a legislative act, make a like requirement limited to a single municipality.

Nor need we cite authority for the proposition that the Fourteenth Amendment does not require the uniform application of legislation to objects that are different, where those differences may be made the rational basis of legislative discrimination. There is nothing in the record now before us to show that there is any similarity of plaintiff's road to others in the state with respect to many

considerations which might reasonably determine which roads should be required to do street paving. Differences

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in location, use, and physical character of the streets, the extent to which paving has been completed and local methods of assessing benefits for street paving, are some of the considerations which might reasonably move the legislature to require street paving of one road or several and not of others. *Cf. New York ex rel. Metropolitan Street Ry. v. State Board of Tax Comm'rs,* 199 U. S. 1 , 199 U. S. 46 -47; *N.Y. N.H. & H.R. Co. v. New York,* 165 U. S. 628 ; *Erb v. Morasch,* 177 U. S. 584 , 177 U. S. 586 ; *Savannah, Thunderbolt Ry. v. Savannah,* 198 U. S. 392 . We may not assume in the absence of proof that such differences do not exist. *Erb v. Morasch, supra; Middleton v. Texas Power & Light Co.,* 249 U. S. 152 , 249 U. S. 158 ; *Swiss Oil Corp. v. Shanks,* 273 U. S. 407 .

There are no facts disclosed by the record which would enable us to say that the legislative action with which we are here concerned was necessarily arbitrary or unreasonable, or justify us in overruling the judgment of the state court that it was reasonable. *Durham Public Service Co. v. Durham, supra,* 261 U. S. 154 .

Judgment affirmed.