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Collins Vs. Porter

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Court : US Supreme Court

Decided On : Apr-22-1946

Appeal No. : 328 U.S. 46

Appellant : Collins

Respondent : Porter

Judgement :

Collins v. Porter - 328 U.S. 46 (1946)
U.S. Supreme Court Collins v. Porter, 328 U.S. 46 (1946)

Collins v. Porter

No. 393

Argued February 26, 1946

Decided April 22, 1946

328 U.S. 46

CERTIORARI TO THE EMERGENCY COURT OF APPEAL

SYLLABUS

1. The decision of this case on the merits is governed by *Utah Junk Co. v. Porter, ante* p. 328 U. S. 39 . P. 328 U. S. 49 .

2. While a suit for treble damages under 205(e) of the Emergency Price Control Act was pending in the District Court against petitioners, they filed with the Price Administrator a protest under 203(a) seeking to have the regulation on which the enforcement proceeding was based declared invalid or inapplicable. The protest was dismissed by the Price Administrator, and petitioners' ensuing complaint in the Emergency Court of Appeals was dismissed by that court without opinion. Upon a complaint filed by leave of the District Court under 204(e) of the Act, the Emergency Court of Appeals sustained the validity of the regulation but refused to pass on its applicability to petitioners. *Held* that the judgment of the Emergency Court of Appeals dismissing the complaint in the protest proceeding under 203(a) was not rendered moot by its judgment sustaining the validity of the regulation in the proceeding under 204(e). P. 328 U. S. 48 .

3. The fact that Congress, by the 1944 amendment of the Emergency Price Control Act, granted a limited opportunity for review of a regulation by the Emergency Court of Appeals by leave of a district court in which an enforcement proceeding is pending, neither repealed nor qualified the protest proceeding originally authorized by 203(a). The two methods of securing a hearing on the validity and applicability of a price regulation are cumulative, and not alternative. P. 328 U. S. 49 .

4. A person against whom a treble damage suit for violation of a regulation under the Emergency Price Control Act is pending, is a "person subject to . . . such regulation" within the meaning of 203(a) of the Act, although the regulation has since been revoked or superseded. *United States v. Hark,* 320 U. S. 531 . P. 328 U. S. 49 .

Reversed.

Petitioners filed with the Price Administrator a protest under the Emergency Price Control Act. The Price Administrator denied the protest. The Emergency Court of Appeals dismissed the petitioners' complaint. This Court granted certiorari. 326 U.S. 710. *Reversed,* p. 328 U. S. 49 .

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

Petitioners were stockholders in a distilling corporation on the dissolution of which in December, 1942, they received as their share of the assets warehouse receipts covering the bulk whiskey owned by the corporation. Early in January, 1943, they sold these receipts at a price above that fixed by the Administrator for bulk whiskey, Maximum Price Regulation 193, 7 Fed.Reg. 6006 (August 4, 1942), on the assumption that the receipts constituted "securities" expressly exempt from the pricing provisions.

On the basis of the sale of these certificates, the Administrator, under 205(e) of the Emergency Price Control Act, 56 Stat. 23, 34, 50 U.S.C. App. 925(e), brought a suit for treble damages against the petitioner to recover approximately $6,800,000. That suit is still pending. In May, 1945, petitioners, invoking the authority of 203(a), 56 Stat. 23, 31, 58 Stat. 632, 638, 50 U.S.C. App. 923(a), sought to have the regulation on which the enforcement proceedings against them were based declared

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invalid or inapplicable by a protest filed with the Administrator. He dismissed it on the authority of *Thomas Paper Stock Co. v. Bowles,* 148 F.2d 831, the ruling of which we have reversed in *Utah Junk Co. v. Porter,* decided this day, *ante,* p. 328 U. S. 39 . Petitioners then went to the Emergency Court, which dismissed the complaint without opinion, and we granted certiorari. 326 U.S. 710. Prior to the petition for certiorari, petitioners obtained leave of the trial court in the treble damage action to file a complaint with the Emergency Court under 204(e) of the Act, 58 Stat. 632, 639, 50 U.S.C. App. 924(e), and, on January 10, 1946, that court sustained the validity of the regulation. *Collins v. Bowles,* 152 F.2d 760.

The Government contends that the latter decision of the Emergency Court renders moot the judgment of that Court dismissing the complaint, which is the only judgment now before us. This Court is powerless to decide a case if its decision "cannot affect the rights of the litigants in the case before it." *St. Pierre v. United States,* 319 U. S. 41 , 319 U. S. 42 . The decision of this case may affect the rights of the litigants. The Emergency Court sustained the challenged regulation. It refused to pass on the applicability of the regulation to the petitioners. It left that question to the District Court before which the treble damage suit is pending. Had petitioners' contentions come before the Emergency Court through the protest proceedings under 203(a), that court would have adjudicated both issues. *Conklin Pen Co. v. Bowles,* 152 F.2d 764; *Collins v. Bowles, supra.* And, in the event that the Emergency Court had found the regulation inapplicable and such decision had been made before a judgment was rendered in the District Court, its ruling would be binding upon the District Court. Under 204(e)(2)(ii), consideration of a protest under 203(a) is not a ground for staying the

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proceedings in the District Court, since the protest proceeding did not precede the suit in the District Court, and under the same provisions of the Act, determination of the protest proceeding under 203(a) can have no retroactive effect once the District Court has entered its judgment. But the opportunity for securing a decision from the Emergency Court through the protest proceeding before

a judgment in the District Court is entered has practical significance, and makes this a living, and not a hypothetical, controversy.

On the merits, the case is governed by our decision in *Utah Junk Co. v. Porter.* The petitioner in this case had a right to have his protest considered by the Administrator and, in case of denial, to resort to the Emergency Court of Appeals. The fact that Congress, in 1944, gave a limited opportunity to go to the Emergency Court by leave of the District Court before which an enforcement proceeding is pending, 204(e), neither repealed nor qualified the protest proceeding originally designed by 203(a). The two modes of securing a hearing on the validity and

applicability of the price regulation are cumulative, and not alternative. The Administrator advances no argument to distinguish the case from that of *Utah Junk Co. v. Porter.* His contention that the petitioner is not a "person subject to . . . [the] regulation," 203(a), is amply refuted by the continuing liability of the petitioners, *United States v. Hark,* 320 U. S. 531 , for some $6,800,000, should their arguments as to the invalidity and inapplicability of the regulation be rejected when the case is considered on the merits.

It is superfluous to discuss other issues raised in this case.

Judgment reversed.

MR. JUSTICE JACKSON took no part in the consideration or decision of this case.

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