SUPREME COURT OF UNITED STATES

Kotch et al.

Vs.

Board of River Port Pilot Com'rs For Port of New Orleans et al.

No. 291.

Argued Feb. 5, 6, 1947.

Decided March 31, 1947.

Rehearing Denied April 28, 1947

See 331 U.S. 864, 67 S.Ct. 1196.

Messrs. Charles A. O'Niell, Jr., and M. A. Grace, both of New Orleans, La., for appellants.

Mr. Arthur A. Moreno, of New Orleans, La., for appellees.

Mr. Justice BLACK delivered the opinion of the Court.

Louisiana statutes provide in general that all seagoing vessels moving between New Orleans and foreign ports must be navigated through the Mississippi River approaches to the port of New Orleans and within it, exclusively by pilots who are State Officers.1 New State pilots are appointed by the governor only upon certification of a State Board of River Pilot Commissioners, themselves pilots.2 Only those who have served a six month apprenticeship under incumbent pilots and who possess other § ecific qualifications may be certified to the governor by the board.3 Appellants here

have had at least fifteen years experience in the river, the port, and else where, as pilots of vessels whose pilotage was not governed by the State law in question.4 Although they possess all the statutory qualifications except that they have not served the requisite six months apprenticeship under Louisiana officer pilots,5 they have been denied appointment as State pilots. Seeking relief in a Louisiana state court, they alleged that the incumbent pilots, having unfettered discretion under the law in the selection of apprentices, had selected with occasional exception, only the relatives and friends of incumbents; that the selections were made by electing prosepective apprentices into the pilots' association, which the pilots have formed by authority of State law;6 that since 'membership * * * is closed to all except those having the favor of the pilots' the result is that only their relatives and friends have and can become State pilots.7 The Supreme Court of Louisiana has held that the pilotage law so administered does not violate the equal protection clause of the Fourteenth Amendment, 209 La. 737, 25 So.2d 527. The case is here on appeal from that decision under 28 U.S.C. § 344(a), 28 U.S.C.A. § 344(a).

The constitutional command for a state to afford 'equal protection of the laws' sets a goal not attainable by the invention and application of a precise formula. This Court has never attempted that impossible task. A law which affects the activities of some groups differently from the way in which it affects the activities of other groups is not necessarily banned by the Fourteenth Amendment. See e.g., Tigner v. State of Texas, [1940] USSC 109; 310 U.S. 141, 147[1940] USSC 109; , 60 S.Ct. 879, 882[1940] USSC 109; , 84 L.Ed. 1124, 130 A.L.R. 1321. Otherwise, effective regulation in the public interest could not be provided, however essential that regulation might be. For it is axiomatic that the consequence of regulating by setting apart a classified group is that those in it will be subject to some restrictions or receive certain advantages that do not apply to other groups or to all the public. Atchison, T. & S.F.R. Co. v. Matthews, [1899] USSC 89; 174 U.S. 96, 106[1899] USSC 89; , 19 S.Ct. 609, 613[1899] USSC 89; , 43 L.Ed. 909. This selective application of a regulation is discrimination in the broad sense, but it may or may not deny equal protection of the laws. Clearly, it might offend that constitutional safeguard if it rested on grounds wholly irrelevant to achievement of the regulation's objectives. An example would be a law applied to deny a person a right to earn a living or hold any job because of hostility to his particular race, religion, beliefs, or because of any other reason having no rational relation to the regulated activities. See American Sugar Refining Co. v. State of Louisiana, [1900] USSC 187; 179 U.S. 89, 92[1900] USSC 187; , 21 S.Ct. 43, 45[1900] USSC 187; , 45 L.Ed. 102.

The case of Yick Wo v. Hopkins, [1886] USSC 197; 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220, relied on by appellants, is an illustration of a type of discrimination which is incompatible with any fair conception of equal protection of the laws. Yick Wo was denied the right to engage in an occupation supposedly open to all who could conduct their business in accordance with the law's requirements. He could meet these requirements, but was denied the right to do so solely because he was Chinese. And it made no difference that under the law as written Yick Wo would have enjoyed the same protection as all others. Its unequal application to Yick Wo was enough to condemn it. But Yick Wo's case, as other cases have demonstrated, was tested by the language of the law there considered and the administration there shown. Cf. Crowley v. Christensen, [1890] USSC 225; 137 U.S. 86, 93, 94[1890] USSC 225; , 11 S.Ct. 13, 16, 17[1890] USSC 225; , 34 L.Ed. 620; Gundling v. City of Chicago, [1900] USSC 87; 177 U.S. 183, 20 S.Ct. 633, 44 L.Ed. 725; People of State of New York ex rel. Lieberman v. Van De Carr, [1905] USSC 187; 199 U.S. 552, 26 S.Ct. 144, 50

L.Ed. 305; Engel v. O'Malley, [1911] USSC 4; 219 U.S. 128, 137[1911] USSC 4; , 31 S.Ct. 190, 192[1911] USSC 4; , 55 L.Ed. 128. So here, we must consider the relationship of the method of appointing pilots to the broad objectives of the entire Louisiana pilotage law. See Grainger v. Douglas Park Jockey Club, 6 Cir., 148 F. 513, and cases there cited. In so doing we must view the appointment system in the context of the historical evolution of the laws and institution of pilotage in Louisiana and elsewhere. Cf. Otis Co. v. Ludlow Mfg. Co. [1906] USSC 59; 201 U.S. 140, 154[1906] USSC 59; , 26 S.Ct. 353, 355[1906] USSC 59; , 50 L.Ed. 696; Jackman v. Rosenbaum, [1922] USSC 146; 260 U.S. 22, 31[1922] USSC 146; , 43 S.Ct. 9, 10[1922] USSC 146; , 67 L.Ed. 107; Bayside Fish Flour Co. v. Gentry, [1936] USSC 38; 297 U.S. 422, 428 430[1936] USSC 38; , 56 S.Ct. 513, 515—517, 80 L.Ed. 388. And an important factor in our consideration is that this case tests the right and power of a state to select its own agents and officers. Taylor v. Beckham, [1900] USSC 153; 178 U.S. 548, 20 S.Ct. 1009, 44 L.Ed. 1187; Snowden v. Hughes, [1944] USSC 47; 321 U.S. 1, 11—13[1944] USSC 47; , 64 S.Ct. 397, 402—404[1944] USSC 47; , 88 L.Ed. 497.

Studies of the long history of pilotage reveal that it is a unique institution and must be judged as such.8 In order to avoid invisible hazards, vessels approaching and leaving ports must be conducted from and to open waters by persons intimately familiar with the local waters. The pilot's job generally requires that he go outside the harbor's entrance in a small boat to meet incoming ships, board them and direct their course from open waters to the port. The same service is performed for vessels leaving the port. Pilots are thus indispensable cogs in the transportation system of every maritime economy. Their work prevents traffic congestion and accidents which would impair navigation in and to the ports. It affects the safety of lives and cargo, the cost and time expended in port calls, and in some measure, the competitive attractiveness of particular ports. Thus, for the same reasons that governments of most maritime communities have subsidized, regulated, or have themselves operated docks and other harbor facilities and sought to improve the approaches to their ports, they have closely regulated and often operated their ports' pilotage system.9

The history and practice of pilotage demonstrate that, although inextricably geared to a complex commercial economy, it is also a highly personalized calling.10 A pilot does not require a formalized technical education so much as a detailed and extremely intimate, almost intuitive, knowledge of the weather, waterways and conformation of the harbor or river which he serves. This seems to be particularly true of the approaches to New Orleans through the treacherous and shifting channel of the Mississippi River.11 Moreover, harbor entrances where pilots can most conveniently make their homes and still be close to places where they board incoming and leave outgoing ships are usually some distance from the port cities they serve.12 These 'pilot towns' have begun, and generally exist today, as small communities of pilots perhaps near, but usually distinct from the port cities.13 In these communities young men have an opportunity to acquire special knowledge of the weather and water hazards of the locality and seem to grow up with ambitions to become pilots in the traditions of their fathers, relatives, and neighbors.14 We are asked, in effect, to say that Louisiana is without constitutional authority to conclude that apprenticeship under persons specially interested in a pilot's future is the best way to fit him for duty as a pilot officer in the service of the State.

The States have had full power to regulate pilotage of certain kinds of vessels since 1789 when the first Congress decided that then existing state pilot laws were satisfactory and made federal regulation unnecessary. 1 Stat. 53, 54 (1789), 46 U.S.C. § 211, 46 U.S.C.A. § 211; Olsen v. Smith, [1904] USSC 184; 195 U.S. 332, 341[1904] USSC 184; , 25 S.Ct. 52, 53[1904] USSC 184; , 49 L.Ed. 224; Anderson v. Pacific Coast S.S. Co., [1912] USSC 141; 225 U.S. 187, 32 S.Ct. 626, 56 L.Ed. 1047. Louisiana legislation has controlled the activities and appointment of pilots since 1805—even before the Territory was admitted as a State.15 The State pilotage system, as it has evolved since 1805, is typical of that which grew up in most seaboard states and in foreign countries.16 Since 1805 Louisiana pilots have been State officers whose work has been controlled by the State.17 That Act forbade all but a limited number of pilots appointed by the governor to serve in that capacity. The pilots so appointed were authorized to select their own deputies.18 But pilots, and through them, their deputies, were literally under the command of the master and the wardens of the port of New Orleans, appointed by the governor. The master and wardens were authorized to make rules governing the practices of pilots, specifically empowered to order pilots to their stations, and to fine them for disobedience to orders or rules. And the pilots were required to make official bond for faithful performance of their duty. Pilots' fees were fixed;19 ships coming to the Mississippi were required to pay pilotage whether they took on pilots or not.20 The pilots were authorized to organize an association whose membership they controlled in order 'to enforce the legal regulations, and add to the efficiency of the service required thereby.'21 Moreover, efficient and adequate service was sought to be insured by requiring the Board of Pilot Commissioners to report to the governor and authorizing him simmarily to remove any pilot guilty of 'neglect of duty, habitual intemperance, carelessness, incompetency, or any act of conduct * * * showing' that he 'ought to be removed.' La.Act. No. 113, § 20 (1857). These provisions have been carried over with some revision into the present comprehensive Louisiana pilotage law. 6 La.Gen.Stat., cc. 6, 8 (1939). Thus in Louisiana, as elsewhere, it seems to have been accepted at an early date that in pilotage, unlike other occupations, competition for appointment, for the opportunity to serve particular ships and for fees, adversely affects the public interest in pilotage.22

It is within the framework of this longstanding pilotage regulation system that the practice has apparently existed of permitting pilots, if they choose, to select their relatives and friends as the only ones ultimately eligible for appointment as pilots by the governor. Many other states have established pilotage systems which make the selection of pilots on this basis possible.23 Thus it was noted thirty years ago in a Department of Commerce study of pilotage that membership of pilot associations 'is limited to persons agreeable to those already members, generally relatives and friends of the pilots. Probably in pilotage more than in any other occupation in the United States the male members of a family follow the same work from generation to generation.'24

The practice of nepotism in appointing public servants has been a subject of controversy in this country throughout our history. Some states have adopted constitutional amendments25 or statutes,26 to prohibit it. These have reflected state policies to wipe out the practice. But Louisiana and most other states have adopted no such general policy. We can only assume that the Louisiana legislature weighed the obvious possibility of evil against whatever useful function a closely knit pilotage system may serve. Thus the advantages of early experience under friendly supervision in the locality of the pilot's training, the benefits to morale and esprit de corps which family and neighborly tradition might contribute, the close association in which pilots must work and live in their pilot communities and on the water, and the discipline and regulation which is imposed to assure the State competent pilot service after appointment, might have prompted the legislature to permit Louisiana pilot officers to select those which whom they would serve.

The number of people, as a practical matter, who can be pilots is very limited. No matter what system of selection is adopted, all but the few occasionally selected must of necessity be excluded. Cf. Olsen v. Smith, supra, 195 U.S. at pages 344, 345, 25 S.Ct. at pages 54, 55[1904] USSC 184; , 49 L.Ed. 224.27 We are aware of no decision of this Court holding that the Constitution requires a state governor, or subordinates responsible to him and removable by him for cause, to select state public servants by competitive tests or by any other particular method of selection. The object of the entire pilotage law, as we have pointed out, is to secure for the State and others interested the safest and most efficiently operated pilotage system practicable. We cannot say that the method adopted in Louisiana for the selection of pilots is unrelated to this objective. See Olsen v. Smith, supra; cf. Carmichael v. Southern Coal Co., [1937] USSC 108; 301 U.S. 495, 509, 510[1937] USSC 108; , 57 S.Ct. 868, 872, 873[1937] USSC 108; , 81 L.Ed. 1245, 109 A.L.R. 1327. We do not need to consider hypothetical questions concerning any similar system of selection which might conceivably be practiced in other professions or businesses regulated or operated by state governments. It is enough here that considering the entirely unique institution of pilotage in the light of its history in Louisiana, we cannot say that the practice appellants attack is the kind of discrimination which violates the equal protection clause of the Fourteenth Amendment.

Affirmed.

Mr. Justice RUTLEDGE, dissenting.

The unique history and conditions surrounding the activities of river port pilots, shortly recounted in the Court's opinion, justify a high degree of public regulation. But I do not think they can sustain a system of entailment for the occupation. If Louisiana were to provide by statute in haec verba that only members of John Smith's family would be eligible for the public calling of pilot, I have no doubt that the statute on its face would infringe the Fourteenth Amendment. And this would be true, even though John Smith and the members of his family had been pilots for generations. It would be true also if the right were expanded to include a number of designated families.

In final analysis this is, I think, the situation presented on this record. While the statutes applicable do not purport on their face to restrict the right to become a licensed pilot to members of the families of licensed pilots, the charge is that they have been so administered. And this charge not only is borne out by the record but is accepted by the Court as having been sustained.1

The result of the decision therefore is to approve as constitutional state regulation which makes admission to the ranks of pilots turn finally on consanguinity. Blood is, in effect, made the crux of selection. That, in my opinion, is forbidden by the Fourteenth Amendment's guaranty against denial of the equal protection of the laws. The door is thereby closed to all not having blood relationship to presently licensed pilots. Whether the occupation is considered as having the status of 'public officer' or of highly regulated private employment, it is beyond legislative power to make entrance to it turn upon such a criterion. The Amendment makes no exception from its prohibitions against state action on account of the fact that public rather than private employment is affected by the forbidden discriminations. That fact simply makes violation all the more clear where those discriminations are shown to exist.

It is not enough to avoid the Amendment's force that a familial system may have a tendency or, as the Court puts it, a direct relationship to the end of securing an efficient pilotage system. Classification based on the purpose to be accomplished may be said abstractly to be sound. But when the test adopted and applied in fact is race or consanguinity, it cannot be used constitutionally to bar all except a group chosen by such a relationship from public employment. That is not a test; it is a wholly arbitrary exercise of power.

Conceivably the familial system would be the most effective possible scheme for training many kinds of artisans or public servans, sheerly from the viewpoint of securing the highest degree of skill and competence. Indeed, something very worth while largely disappeared from our national life when the once prevalent familial system of conducting manufacturing and mercantile enterprises went out and was replaced by the highly impersonal corporate system for doing business.

But that loss is not one to be repaired under our scheme by legislation framed or administered to perpetuate family monopolies of either private occupations or branches of the public service. It is precisely because the Amendment forbids enclosing those areas by legislative lines drawn on the basis of race, color, creed, and the like, that, in cases like this, the possibly most efficient method of securing the highest development of skills cannot be established by law. Absent any such bar, the presence of such a tendency or direct relationship would be effective for sustaining the legislation. It cannot be effective to overcome the bar itself. The discrimination here is not shown to be consciously racial in character. But I am unable to differentiate in effects one founded on blood relationship.

The case therefore falls squarely within the ruling in Yick Wo v. Hopkins, [1886] USSC 197; 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220,2 not only with relation to the line of discrimination employed, but also in the fact that unconstitutional administration of a statute otherwise valid on its face incurs the same condemnation as if the statute had incorporated the discrimination in terms. Appellants here are entitled, in my judgment, to the same relief as was afforded in the Yick Wo case.

Mr. Justice REED, Mr. Justice DOUGLAS and Mr. Justice MURPHY join in this dissent.