SUPREME COURT OF UNITED STATES

State of Missouri ex rel. BARRETT, Atty. Gen., et al.

Vs.

Kansas Natural Gas Co. Kansas Natural Gas Co. v. State OF Kansas ex rel. Helm. State of Kansas et rel. Jackson v. Central Trust Co. of NEW York et al.

No. 155.

No. 133.

No. 137.

Argued April 21, 1924.

Decided May 26, 1924.

Mr. J. W. Dana, of Kansas City, Mo., for Kansas City Gas Co. and Public Service Commission of Missouri.

[Argument of Counsel from pages 299-303 intentionally omitted]

Messrs. Robert D. Garver and H. O. Caster, both of Bartlesville, Okl., for Kansas Natural Gas Co.

Messrs. Frank E. Atwood, of Carrollton, Mo., John M. Garfield, of Cleveland, Ohio, Jesse W. Barrett and James D. Lindsay, both of Jefferson City, Mo., and L. H. Breuer, of Rolla, Mo., for the State of Missouri and Missouri Public Service Commission.

Mr. F. S. Jackson, of Topeka, Kan., for Helm.

Mr. Justice SUTHERLAND delivered the opinion of the Court.

These cases were consolidated for argument. They present for decision the single question whether the business of the Kansas Natural Gas Company, hereinafter called the Supply Company, consisting of the transportation of natural gas from one state to another for sale, and its sale and delivery, to distributing companies, is interstate commerce, free from state interference?

The facts necessary to be considered in reaching a conclusion are, shortly, as follows:

The Supply Company is a Delaware corporation, engaged in producing and buying natural gas, mostly in Oklahoma but some in Kansas, and, by means of pipe lines, transporting it into Kansas and from Kansas into the state of Missouri, and in each state selling and delivering it to distributing companies, which then sell and deliver it to local consumers in numerous communities in Kansas and Missouri. The gas originating in Kansas is mingled for transportation in the same lines with that originating in Oklahoma. The pipe lines are continuous from the wells to the place of delivery.

The three cases are alike in the fact that they arise from the action of the Supply Company in making an increase of rates from 35 cents to 40 cents per 1,000 cubic feet—in Missouri, without the consent and approval of the Public Utilities Commission of the state, and in Kansas, notwithstanding a previous order of the federal court fixing a 35-cent rate and the action of the Utilities Commission approving and fixing that rate. The power of the Utilities Commission of each state is challenged on the ground that the matter, under the commerce clause of the Constitution, is not subject to state control.

In No. 155, appellants brought suit in the federal District Court to enjoin the Supply Company from increasing its rates. The injunction prayed was denied. 282 Fed. 341.

In No. 133, the defendants in error filed a petition in the Kansas Supreme Court for a writ of mandamus to compel the Supply Company to re-establish and maintain the rate of 35 cents per 1,000 cubic feet for gas furnished to the distributing companies, until otherwise ordered by the Utilities Commission. The case was presented to that court on demurrer to the return and answer. The demurrer was sustained and a peremptory writ of mandamus allowed, as prayed, 111 Kan. 809, 208 Pac. 622.

In No. 137, the suit was to enjoin the Supply Company from collecting or attempting to collect the increased rates from various gas distributing companies until the consent thereto of the Utilities Commission of the state should be secured. The federal District Court denied the injunction, but retained the bill for another purpose, not necessary to be stated. Central Trust Co. of New York v. Consumers' Light, Heat & Power Co., 282 Fed. 680.

The business of the Supply Company, with an exception not important here, is wholly interstate. The sales and deliveries are in large quantities not for consumption, but for resale to consumers. There is no relation of agency between the Supply Company and the distributing companies, or other relation except that of seller and buyer (Public Utilities Comm. v. Landon, [1919] USSC 80; 249 U. S. 236, 244-245[1919] USSC 80; , 39 Sup. Ct. 268, 63 L. Ed. 577), and the interest of the former in the commodity ends with its delivery to the latter, to which title and control thereupon pass absolutely. The question is therefore presented in its simplest form, and, if the claim of state power be upheld, it is difficult to see how it could be denied in any case of interstate transportation and sale of gas. Both federal courts denied the power. The state court conceded that the business was interstate and subject to federal control, but rested its decision the other way upon the fact that Congress had not acted in the matter and that, in the absence of such action, it was within the regulating power of the state.

The question is controlled by familiar principles. Transportation of gas from one state to another is interstate commerce, and the sale and delivery of it to the local distributing companies is a part of such commerce. In Public Utilities Comm. v. Landon, supra, at page 245 (39 Sup. Ct. 269) this court said:

'That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted; also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state.'

See Pennsylvania v. West Virginia, [1923] USSC 170; 262 U. S. 553, 596[1923] USSC 170; , 43 Sup. Ct. 658, 67 L. Ed. 1117) and cases there cited.

The line of division between cases where, in the absence of congressional action, the state is authorized to act, and those where state action is precluded by mere force of the commerce clause of the Constitution, is not always clearly marked. In the absence of congressional legislation, a state may constitutionally impose taxes, enact inspection laws, quarantine laws and, generally, laws of internal police, although they may have an incidental effect upon interstate commerce. Pennsylvania Railroad Co. v. Hughes, [1903] USSC 214; 191 U. S. 477, 488-491[1903] USSC 214; , 24 Sup. Ct. 132, 48 L. Ed. 268. But the commerce clause of the Constitution, of its own force, restrains the states from imposing direct burdens upon interstate commerce. In Minnesota Rate Cases[1913] USSC 200; , 230 U. S. 352, 396[1913] USSC 200; , 33 Sup. Ct. 729, 739 [1913] USSC 200; (57 L. Ed. 1511, 48 L. R. A. [N. S.] 1151, Ann. Cas. 1916A, 18), Mr. Justice Hughes, speaking for the court, said:

'If a state enactment imposes a *direct burden* upon interstate commerce, it must fall, regardless of federal legislation. The point of such an objection is not that Congress has acted, but that the state has directly restrained that which in the absence of federal regulation should be free.'

The question is so fully discussed in that case, that nothing beyond its citation is required.

The contention that, in the public interest, the business is one requiring regulation, need not be challenged. But Congress thus far has not seen fit to regulate it, and its silence, where it has the sole power to speak, is equivalent to a declaration that that particular commerce shall be free from regulation. See Robbins v. Shelby County Taxing District, [1887] USSC 85; 120 U. S. 489, 493[1887] USSC 85; , 7 Sup. Ct. 592, 30 L. Ed. 694. With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to state regulation. Public Utilities Comm. v. Landon, supra, page 245 [1919] USSC 80; (39 Sup. Ct. 268). In such case the effect on interstate commerce, if there be any, is indirect and incidental. But the sale and delivery here is an inseparable part of a transaction in interstate commerce—not local, but essentially national, in character—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. It is as though the commission stood at the state line and imposed its regulation upon the final step in the process at the moment the interstate commodity entered the state and before it had become part of the general mass of property therein. See Brown v. Houston, [1885] USSC 150; 114 U. S. 622, 634[1885] USSC 150; , 5 Sup. Ct. 1091, 29 L. Ed. 257. There is nothing in Penna. Gas Co. v. Pub. Service Comm., [1920] USSC 48; 252 U. S. 23, 40 Sup. Ct. 279, 64 L. Ed. 434, inconsistent with this view. There the Gas Company, a Pennsylvania corporation, transmitted gas from Pennsylvania into New York and sold it directly to the consumers. The service to the consumers, which was the thing for which the regulated charge was made, was essentially local and the decision rests upon this feature. Mr. Justice Day, in the course of the opinion, said (page 31 [40 Sup. Ct. 281]):

'The pipes which reach the customers served are supplied with gas directly from the main of the company which brings it into the state, nevertheless the service rendered is essentially local, and the sale of gas is by the company to local consumers who are reached by the use of the streets of the city in which the pipes are laid, and through which the gas is conducted to factories and residences as it is required for use. The service is similar to that of a local plant furnishing gas to consumers in a city.'

The commodity, after reaching the point of distribution in New York was subdivided and sold at retail. The Landon Case, so far as this phase is concerned, differs only in the fact that the process of division and sale to consumers was carried on, not by the Supply Company, but by independent distributing companies.

In both cases the things done were local and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is clearly recognized in the Landon Case. The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another state and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different states. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The paramount interest is not local but national, admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental nonaction, may be highly necessary to preserve equality of opportunity and treatment among the various communities and states concerned. See, for example: Welton v. State of Missouri, [1875] USSC 187; 91 U. S. 275, 282[1875] USSC 187; , 23 L. Ed. 347; Hall v. De Cuir, [1877] USSC 88; 95 U. S. 485, 490[1877] USSC 88; , 24 L. Ed. 547.

That some or all of the distributing companies are operating under state or municipal franchises cannot affect the question. It is enough to say that the Supply Company is not so operating and is not made a party to these franchises by merely doing business with the franchise holders.

No. 155. Affirmed.

No. 133. Reversed.

No. 137. Affirmed.