1940

Adolph Coors Company v. Liquor Control Commission of Utah, J. W. Funk, Herbert C. Taylor and Henry Jorgensen as Commissioners of the Liquor Control Commission of the State of Utah : Brief of Amicus Curiae

Utah Supreme Court

No. 6245

In the Supreme Court of the State of Utah

ADOLPH COORS COMPANY, a corporation,

Plaintiff,

vs.

LIQUOR CONTROL COMMISSION OF UTAH, J. W. FUNK, HERBERT C. TAYLOR AND HENRY JORGENSEN AS COMMISSIONERS OF THE LIQUOR CONTROL COMMISSION OF THE STATE OF UTAH,

Defendants.

BRIEF OF AMICUS CURIAE

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BRIEF OF AMICUS CURIAE

By leave of court first had and obtained local industries affected by Regulation No. 20 of the Liquor Control Commission of Utah have been permitted to file this brief by and through counsel as "amicus curiae." At the outset, it is conceded that the attitude of the industries so represented is in favor of Regulation No. 20 and primarily because of its stabilizing and economic effect upon an industry of large proportions in this state.

STATEMENT OF FACTS

This matter comes before the Court upon an original proceeding instituted by Adolph Coors Company, a corporation, of the State of Colorado, seeking a permanent writ of prohibition against the defendants from enforcing a regulation promulgated by them regulating the size of containers and packages used in the distribution of "light" beer in the State of Utah.

The complaint and application for the writ represents that the plaintiff has invested in excess of $50,000.00 in bottles and equipment to enable it to sell "light beer" in eight ounce bottles; that it is packaging and selling beer in such containers in several states surrounding the State of Utah and that not being permitted to sell its product in the odd package mentioned in this state it will suffer "irreparable injury and damage." It is not alleged that the plaintiff has ever sold its product in an eight ounce container in this state nor is it alleged that it is unable to sell its product in this state in containers of the size specified by Regulation No. 20.

A demurrer to the complaint and application for writ of prohibition has been filed by the defendants, Liquor Control Commission of Utah and the individual commissioners thereof, and which demurrer, of course, admits for the purpose of argument all facts well pleaded but raises as an issue of law that the plaintiff is not entitled to the relief prayed for.

QUESTIONS INVOLVED

As will appear by way of argument, many of the averments of the complaint and application for writ of prohibition are mere conclusions of law. The complaint of the plaintiff having been attacked by a general demurrer it is stripped of its legal verbiage and redundancy and gives rise to but one question: Was the Liquor Control Commission of Utah empowered under the Liquor Control Act to promulgate Regulation No. 20, regardless of motives and purposes prompting such promulgation?

ARGUMENT

The Liquor Control Act (Session Laws of Utah, 1935, pp. 57-87 and as amended by Session Laws of Utah, 1937, pp. 107-115) is deemed to be an exercise of police power and by legislative edict is to be liberally construed. We quote from Section 2 of Chapter 43 of the Session Laws of Utah, 1935, as follows:

> "This act shall be deemed an exercise of the police powers of the state for the protection of the public health, peace and morals; to prevent the recurrence of abuses associated with saloons; to eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of alcoholic beverages; and all provisions of this act shall be liberally construed for the attainment of these purposes."

Section 7 of the Act pertains to the rule-making power conferred upon the Commission. We quote Section 7:

> "The commission may, from time to time, make such resolutions, orders and regulations, not inconsistent with this act, *as it may deem necessary for carrying out the provisions thereof and for its efficient administration.* The commission shall cause such regulations to be filed in the office of the secretary of state, *and thereupon they shall have the same force as if they formed a part of this act.* The commission may amend or repeal such regulations, and such amendments or repeals shall be filed in the same manner, and with like effect. The commission may from time to time cause such regulations to be printed for distribution in such manner as it may deem proper." (Italics ours.)

Section 8 makes reference to some particular subjects, as does other portions of the Act, upon which the Commission may exercise its rule-making power but Section 8 expressly provides that the particular subjects mentioned therein in nowise limit the general rule-making power conferred upon the Commission by Section 7. What might be called the preamble to Section 8 provides as follows:

> "Without limiting the generality of the provisions contained in section 7 it is declared that the powers of the commission to make regulations in the manner set out in the said section shall extend to and including the following:"

Subdivisions (r) and (s) of Section 8 read as follows:

> "(r) Governing the conduct, management and equipment of any premises upon which alcoholic beverages may be sold or consumed;
>
> "(s) Making all needful regulations for the better carrying out of the provisions of this act." (L. 35, p. 59, 60.)

The case of *Bird & Jex Co., et al., v. Funk, et al.*, 96 Utah 450, 85 Pac. (2d) 831, is, we believe the last expression of this Court on the rule-making power of the Commission. The Court, speaking through Chief Justice Folland, reviewed the declared policies and purposes of the Legislature in granting to the Commission regulatory powers and summarized the law with respect to the delegation of powers in the following words:

> "Where the legislature delegates to an administrative agency power to make rules and regulations, such delegation must be accompanied by a declared policy outlining the field within which such rules and regulations may be adopted. Schechter Poultry Corp. v. U. S., 295 U. S. 495, 55 S. Ct. 837, 79 L. Ed. 1570, 97 A. L. R. 947; Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446; State v. Goss, 79 Utah 559, 11 P. 2d 340. From this it must necessarily follow that all rules and regulations adopted by an administrative board or agency must be in furtherance of and follow out the declared policies of the legislative enactment. If the regulations or rules are in excess of the declared purposes of the statute, they are invalid. State v. Goss, supra; Utah Mfrs. Ass'n v. Stewart, 82 Utah 198, 23 P. 2d 229.

"In the case of State v. Goss, supra, the court was confronted with the problem of determining whether certain regulations promulgated by the State Board of Health were valid. It was held in that case that there was no declared policy in the statute with respect to which the rules and regulations prohibiting use of unsterilized cups or receptacles for dispensing of soft drinks were adopted by the board of health. There was not anything in the statute which defined the legislative policy with respect to the subject covered by the rules and regulations.

"What are the declared policies of the legislature with respect to the rules and regulations of the Liquor Commission here in dispute? The declared general purposes of the Liquor Control Act, under which the Liquor Commission derives its authority are 'for the protection of the public health, peace and morals; to prevent the recurrence of abuses associated with saloons; to eliminate the evils of unlicensed and unlawful manufacture, selling and disposing of alcoholic beverages * * *.' Section 2. The declared policy with respect to advertisement of alcoholic beverages is stated in Sec. 140 as prohibiting the use of any means of inducing persons to buy any of such beverages or entering places where they are sold. To fulfill the policies outlined by the legislature in the act, the Liquor Commission was given power to 'make such resolutions, orders and regulations, not inconsistent with this act, as it may deem necessary for carrying out the provisions thereof and for its efficient administration.'

"'* * * It is a fundamental rule of statutory construction that the controlling purpose is to ascertain and give effect to the intention and purpose of the legislature. This intent and purpose is to be deduced from the whole and every

> part of the statute taken together. Roseberry v. Norsworthy, 135 Miss. 845, 100 So. 514. We are not limited merely to the purposes declared in Section 2 of the Act. This section is a general declaration of purpose actuating the legislature in passing the Act. In the exercise of the rule-making power, the Commission must be guided by the intent and purpose of the legislature as found by a reading and interpretation of the whole act and every part thereof."

From the foregoing, it must be conceded that if Regulation No. 20 is in furtherance of and follows out the declared policies of the legislative enactment, it should stand until the Commission deems some other regulatory provision more appropriate. In order to ascertain whether or not the regulation is in furtherance of and follows the declared policies of the legislative enactment the whole and every part of the Act must be taken together to discover the intent and purpose of the Legislature.

Subdivision (e) of Section 6 is sufficient alone, we believe, to give the Commission power to regulate the size of containers for beer. That section reads as follows:

> "(e) Control the possession, sale, transportation and delivery of alcoholic beverages in accordance with the provisions of this act *and the regulations.*" (Italics ours.)

Likewise, subdivision (m) of Section 6:

> "(m) Without in any way limiting or being limited by the foregoing specific powers, generally do all such things as are deemed necessary or

> advisable by the commission for carrying into effect the provisions of this act *and the regulations.*" (Italics ours.)

From the various statutes and portions of statutes quoted above, it seems to us that there is no doubt but that any rule pertaining to the capacity of containers for beer, which would in effect simplify the functions of the Commission and make more efficient its jurisdiction over the possession, sale, transportation and delivery of beer and simplify and make more efficient the specifications, designs, denominations of stamps for use on packages and containers and other ministerial functions, would, under the provisions of the Act, be a proper regulatory measure.

Specific rule-making power pertaining to the manufacture, importation, and sale of beer including the bottling thereof is given by Section 83 of the Act which reads as follows:

> "Beer may be manufactured, sold, delivered, distributed, bottled, shipped or transported or removed for storage or consumption or sale within this state, or possessed or consumed therein or imported into or exported therefrom in the manner and under the conditions prescribed in this act, *or in the regulations,* and not otherwise." (L. 35, pp. 70, 71.)

Section 87 of the Act is a recognition of the eleven ounce bottle as a minimum under the Act. The section reads as follows:

> "The commission may grant licenses to brewers to manufacture beer, and to engage in its

> distribution by export or by sale in wholesale or jobbing quantities to the commission or in the case of light beer, to licensed retailers or wholesalers; *provided,* that a licensed brewer or wholesaler upon receiving a bona fide order, may sell not less than a case of *24 11-oz. bottles* or 12 24-oz. bottles or one-eighth barrel of light beer to a customer for his own use and not for resale." (L. 35, p. 71.)

The local industries joining in this brief include the Becker Products Company, Fisher Brewing Company and members of Utah Retail Grocers Ass'n. From the viewpoint of the grocers, it is quite apparent that the handling, grading, retailing, return of empties and the like, of bottled goods tends toward confusion, involves expense and as an incident there is a tremendous economic waste in breakage. To add odd sizes in their beer line will only add to their problems. If beer can be sold in this state in an eight ounce container, then it can be sold in any size container limited only by the resourcefulness and sales tactics of the manufacturer. The ministerial functions necessary under the Liquor Control Act are sufficient in and of themselves to bring about a regulation standardizing the size of containers. Regulation No. 20 should not be set aside merely because the plaintiff has a plant and equipment which permits it to bottle its product in eight ounce containers, particularly in view of the fact that there is no indication that its investment was expended for the purpose of marketing its odd size package in this state and when there is nothing to in-

dicate that it cannot market its product in conformity with the regulation. The Liquor Control Act is most broad and comprehensive. Any ruling adopted by the Commission such as Regulation No. 20 which has the effect of harmonizing, stabilizing and simplifying the work of the Commission should be sustained.

Respectfully submitted,

J. A. HOWELL,
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