1965

S. G. Ricker et al v. Board of Education of Millard County School District : Petition for Rehearing

Utah Supreme Court

Calvin L. Rampton; A. Lee Petersen; Attorneys for Respondents and Cross-Appellants;

IN THE SUPREME COURT OF THE STATE OF UTAH

S. G. RICKER, EUGENE McBRIDE, CARL PROBERT, JAROLD ROBISON, JOYCE WHATCOTT, VIRGE CHRISTENSEN, MAXINE L. ROBISON, JESS C. BENNETT, MAUREL J. WARNER, GRANT BRUNSON,

Plaintiffs, Respondents and Cross-Appellants,

vs.

THE BOARD OF EDUCATION OF MILLARD COUNTY SCHOOL DISTRICT

Defendants, Appellants and Cross-Respondents

Case No. 10215

PETITION FOR REHEARING

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Rehearing is requested on matters pertaining to allocation of bond proceeds only, and not as to matters relating in any way to the validity of the bond election.

BASIS FOR PETITION FOR REHEARING

The respondents, S. G. Ricker, et al., respectively submit that the decision of the Court rendered herein on November 6, 1964, reversing the judgment of the Fifth Judicial District Court, Millard County, constitutes a failure of the Court to protect the integrity of the ballot and to uphold the concept of checks and balances in our system of government, and it upsets the findings of fact made by the above named district court without giving due consideration to them.

ARGUMENT

POINT I.

THE DECISION OF THE COURT CONSTITUTES A FAILURE OF THE COURT TO PROTECT THE INTEGRITY OF THE BALLOT AND TO UPHOLD THE CONCEPT OF CHECKS AND BALANCES IN OUR SYSTEM OF GOVERNMENT.

The Court, in its opinion, states:

> As is the case in other areas in our system of government, it is the citizen's right to vote for and elect officials he thinks best qualified to represent his interests. Having so elected the school board, he then must trust them to administer the school program. But it is not his privilege to intrude directly into the management of school affairs.

Respondents do not disagree with the above statement. But the court then proceeds to apply the principle of the statement to this case by analogizing:

> This principle carries over into the bond election. The taxpayers may give or withhold their consent to the issuance of bonds and creation of indebtedness. But if the consent is given, the disposition of the money raised then becomes the responsibility of the board.

This latter statement is not a fair or proper interpretation of the law. It, in effect, abrogates the legislative intent behind U.C.A., 1953, Title 53, Chapter 10, which sets forth the procedure for creating indebtedness in school districts. Respondents infer and submit to the Court that

the legislature intended by this law to reserve to the taxpayers some actual control over the use of their money; otherwise the law would have been unnecessary.

The law provides, and every intelligent voter understands, that in a bond election the taxpayers give their consent to the issuance of bonds and the creation of indebtedness *for a purpose*. The bonding is merely the means to accomplish the desired purpose. The taxpayers in voting for the issuance of bonds, in effect, say that they want so much to accomplish a particular purpose that they are willing to do it by means of the issuance of bonds. But if the purpose for which the indebtedness is to be incurred is thwarted by the administering board, it can only follow, logically, that the consent to the indebtedness is invalid.

It is the duty of the Court to protect the voters to see that the purposes to which they give their consent are not thwarted, and the law so provides. U.C.A., 1953, 53-10-17 and U.C.A., M53, 20-15-1, *et seq*. In its opinion in this case the Court fails in its duty of protecting the rights of the voters to vote intelligently and meaningfully on issues.

The existence of effective checks and balances is fundamental to our system of government. It is understandable, however, and certainly proper, that each branch of government should exercise great reluctance to encroach upon the domain of another branch, because to do so frequently and needlessly would upset the balance. But the balance is also susceptible to being upset by failure of one branch to check another when circumstances warrant. Respondents submit that in this case the failure of the Court to restrain an administrative board results in imbalance. The Act of the Legislature is made meaning-

less, and the administrative board becomes endowed with near omnipotence, so far as this issue is concerned, because the other branch of government, the Court, chooses to refrain from the exercise of its power.

Surely the Court would not hesitate to intervene to protect the will of the voters if one of five elected school board members were to usurp all powers of the other four, even if he proceeded to administer the school district wisely. Respondent's position is that even though lines cannot be so clearly drawn when dealing only with issues and the appropriating of funds, rather than with individual persons, the electors are entitled to substantially the same protection of the courts in a vote on issues as in a vote on office holders. The respondents are not by this lawsuit attempting to intrude into the management of the school district, which is admittedly the function of the school board. They merely ask that when the law provides them a right to vote, that their vote be meaningful; that the board comply reasonably with the proposition *it* presented to the voters; or, if the board does not now deem it wise to carry out the original proposition, that it present whatever new and different proposition it may wish to make to the voters for a new and meaningful vote.

POINT II

THE OPINION OF THE COURT DOES NOT GIVE DUE CONSIDERATION TO THE FINDINGS OF FACT MADE BY THE DISTRICT COURT.

It is firmly established law that the Supreme Court on review of a decision of a district court should in no case disturb the findings of fact of the district court un-

less after carefully considering the district court's findings, making due allowances as to the better opportunity of the trial court to observe the demeanor of witnesses, determine their credibility and weigh their testimony, it finds that the trial court's findings are without any evidence to support them; or, in an equity case, that the greater weight of the evidence is clearly against the trial court's findings. Only if the Supreme Court should find that the weight of the evidence is clearly against the trial court's findings of fact may it make a new finding or remand the case for further proceedings. *Shaw v. Jeppson,* 121 Utah 155, 239 P. 2d 745; *Jensen v. Howell,* 75 Utah 64, 282 Pac. 1034; *Clark v. Clark,* 74 Utah 290,. 279 P. 502; *Whittaker v. Ferguson,* 16 Utah 240, 51 Pac. 980; *Ogden Packing & Provisions Company v. Tooele Meat & Storage Company,* 41 Utah 92, 124 Pac. 333; *Scott v. Austin,* 47 Utah 248, 152 Pac. 1178.

In considering the findings of fact made by the trial court, the Supreme Court must not confine itself to the findings stated specifically in the trial court's official findings of fact, but must presume that the trial court found every fact to support its order that the evidence would justify its finding. And the trial court must be presumed to have drawn against the unsuccessful party every inference of which the facts and the evidence were susceptible. *Griffith Company v. San Diego College for Women,* 45 Cal. 2d 501, 289 P. 2d 476, 47 ALR 2d 1349; *Thayer v. Shorey,* 287 Mass. 96, 191 N.E. 435, 94 ALR 307; *Pacific Coast Sav. Soc. v. Sturdevant,* 165 Cal. 687, 133 Pac. 485.

And this Court has in the past made statements very similar to the holdings of the above cases, such as:

> The plaintiff having prevailed, he is entitled to the benefit of the evidence viewed in the light most favorable to him, together with every inference and intendment fairly and reasonably arising therefrom. *McCollum v. Clothier,* 121 Utah 311, 241 P. 2d 277.

In its opinion on this case the Court acknowledges that in a case where a board so completely fails to follow the course of its duties that its acts may be classified as capricious and arbitrary, redress may be had in the courts. But it dismisses the possibility of arbitrariness and capriciousness in this case with one brief sentence. This, despite the existence of ample evidence to support a finding of arbitrariness and capriciousness -- and despite the very apparent finding by the trial court that the acts of the board were arbitrary and capricious. These specific terms were not used in the trial court's memorandum of decision, it is logical to assume, for the same reason plaintiff's counsel did not insist that they be included in the court's written findings of fact: that is, that the trial judge and plaintiff's counsel were all hoping to calm troubled waters and were reluctant to inject inflammatory terms where they did not seem absolutely necessary to a proper decision. Notwithstanding that the specific terms were not used, the Supreme Court, under the doctrine of the cases cited above, must presume that a finding of arbitrariness and capriciousness on the part of the board was made by the trial court. This presumption is substantiated by statements made by the trial judge during the course of the trial -- such as statements to the effect that he was somewhat concerned about the building of a plant to accommodate 900 students in the light of a projected enrollment five years hence of 500 students,

while other critical needs of the school district remain unprovided for. (Tr. 181, 196) Further, the trial judge several times during the trial cited and expressed his approval of the Kentucky case of *Wooley v. Spaulding,* 293 S.W. 2d 563, (Tr. 179), and read from it the following quotation:

> While we have many times recognized the discretionary power of a school board with respect to matters within its province, at the same time, in accord with all other courts, we have recognized the right of taxpayers and patrons of schools to challenge the action of the school authorities and declared the power of the courts to intervene when it appears that a board has abused a reasonable discretion and acted *arbitrarily* or *capriciously* or as the result of improper influence. (Italics added)

Then, after considering all the evidence and law in the case, the trial judge did afford redress of the court to the plaintiff taxpayers, thus creating the clear inference that he found this case to be within the purview of the language quoted above.

As an example of the arbitrary and capricious actions of the board in this case, the evidence shows that on July 19, 1963, the board unanimously adopted and ordered published the brochure containing the statement that part of the bond proceeds would be used for construction of new district offices in Fillmore. (Tr. 4 and 5) The evidence in the case further shows that on November 6, 1963, the board, with only three members voting favorably to the motion, adopted a resolution to build (presumably with bond proceeds) the new district offices in or in connection with the new high school building in Delta. (Tr.

16) The board has never claimed that circumstances changed in any material way between July and November. Consequently, this act of the board is open to only two logical inferences: Either the board members intended all along to build the district offices in Delta and deceitfully offered the prospect of new district offices in Fillmore as bait to secure favorable votes on the east side of the district, or the board decided arbitrarily and capriciously to punish the residents of Fillmore and its neighboring communities because the majority of them voted against the bonding proposal. Actually this arbitrary change in location of the proposed new district offices is the issue which triggered the lawsuit, though all parties recognize that there are other and more important issues involved.

Another example of the arbitrariness of the board is that despite Millard County School District being among the poorer districts in the State of Utah, the board intends to construct a new junior-senior high school at Delta at a cost of approximately $59,000 per classroom unit ($1,786,000 divided by 30) which is substantially above the average cost throughout the State of Utah per classroom unit as shown by the evidence presented by defendant's own witnesses. (Tr. 47) And the Court may, if it wishes, take judicial notice that on a cost per student actually enrolled basis, the projected cost of this Millard County project is comparatively very high. This is especially apparent when Superintendent Wright's reasoning is borne in mind -- that a junior high wing can rather economically be added to a high school because numerous facilities such as the gymnasium, auditorium, shops, and home economics facilities need not be duplicated. (Tr. 8)

CONCLUSIONS

The respondents are aware that the Court was subjected to numerous requests from both sides to hear and decide this case quickly, and that it felt constrained to do so because of the broad and important interests of the public which are involved. Nevertheless, while the respondents concede the value of the adage that justice delayed is justice denied, it is no less true that justice in too much of a hurry also may often result in a denial of justice -- as it has in this case. It is highly important that the Court should protect the balance of powers in government and the meaningfulness and integrity of the ballot. It is equally important that a Supreme Court should not lightly indulge in the practice of upsetting the findings of fact of a trial court. We respectfully call these matters to the attention of the Court and urgently request that rehearing be granted.

Respecfully submitted,

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