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Administrative Law--Quasi-Judicial Proceedings--Requirements of a "Full Hearing" (Morgan v. U.S., 58 S. Ct. 773 (1938))

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RECENT DECISIONS

ADMINISTRATIVE LAW — QUASI-JUDICIAL PROCEEDINGS — REQUIREMENTS OF A "FULL HEARING".—In 1930, the Secretary of Agriculture initiated an inquiry as to the reasonableness of the existing rates charged by market agencies at the Kansas City stockyards.¹ The order fixing the maximum rates subsequently followed. The plaintiff sought to enjoin the enforcement of this order on two grounds: (1) that it was made without the "full hearing" required by the statute; (2) that it was arbitrary and illegal, depriving them of their property in violation of the Fifth Amendment.² The District Court dismissed the bills of complaint. On appeal to the Supreme Court, *held*, reversed and remanded.³ Upon the rehearing, the District Court held that the hearing before the Secretary was adequate and his order lawful. The plaintiff again appealed to the Supreme Court on the question of whether a "full hearing" had been granted.⁴ The Supreme Court again reversed. The hearings were fatally defective in that the one who heard the evidence was not the one who decided the rates. The defendants were not afforded sufficient opportunity to become acquainted with the contentions of the Government, and were therefore unable to adequately advance a defense. *Morgan v. United States*, — U. S. —, 58 Sup. Ct. 773 (1938).

A proceeding which results in the fixing of rates of a market agency is of a legislative character, having, in addition, the special attributes of a *quasi-judicial* tribunal.⁵ It is a proceeding by virtue of the authority conferred by Congress and must comply with the standards and limitations which Congress has prescribed.⁶ In delegating to the Secretary of Agriculture the exercise of the extraordinary powers granted by the Packers and Stockyards Act, Congress explicitly expressed the requirement that his action depend upon a

¹ PACKERS AND STOCKYARDS ACT, 42 STAT. 159, 7 U. S. C. A. § 217 (1921).

² U. S. CONST. Amend. V: " * * * nor (shall any person) be deprived of * * * property, without due process of law; * * *".

³ *Morgan v. United States*, 298 U. S. 468, 56 Sup. Ct. 906 (1936); *Morgan v. United States*, — U. S. —, 58 Sup. Ct. 773, 775-776 (1938).

⁴ Appellant alleged that the Government did not submit a brief, formulate issues, furnish appellant with statements of its proposed findings, or prepare a tentative report to be submitted as a basis for exceptions and argument, and that the findings were prepared by the Bureau of Animal Industry and adopted by the Secretary after an *ex parte* consultation with his subordinates and appellant had no opportunity to examine the findings until served with the order.

⁵ *Interstate Commerce Commission v. Louisville & Nashville R. R.*, 227 U. S. 88, 33 Sup. Ct. 185 (1913); *Louisville & Nashville R. R. v. Garrett*, 231 U. S. 298, 34 Sup. Ct. 48 (1913); *Morgan v. United States*, 298 U. S. 468, 56 Sup. Ct. 906 (1936); *St. Joseph Stock Yards v. United States*, 298 U. S. 88, 56 Sup. Ct. 720 (1936).

⁶ *Morgan v. United States*, 298 U. S. 468, 56 Sup. Ct. 906 (1936).

“full hearing”⁷ and unless such a hearing is granted, the order is void.⁸

The requirement of a “full hearing” has reference to the tradition of judicial proceedings and is to be interpreted with regard to judicial standards, not in a narrow, technical sense, but with respect to the fundamental requirements⁹ guaranteed by the Constitution which are of the essence of due process in a proceeding of a judicial nature.¹⁰ The “inexorable safeguard” which the due process clause assures is that the trier of facts shall be an impartial tribunal, that no finding shall be made except upon actual or constructive notice¹¹ and opportunity to be heard, that there be evidence adequate to support pertinent and necessary findings of fact, that nothing be treated as evidence which is not introduced as such, that facts and circumstances which ought to be considered must not be excluded, that findings based on facts must embrace the basic facts which are needed to sustain the order,¹² that the procedure be conducted in such a way that there be an opportunity for a court to determine whether applicable rules of procedure were observed.¹³ The right to a hearing embraces not

⁷ 42 STAT. 166 (1921), 7 U. S. C. § 211 (1934) provides, “Whenever after full hearing * * * the Secretary is of the opinion that any rate * * * is or will be unjust, unreasonable, or discriminatory—

(a) May determine and prescribe what will be a just and reasonable rate or charge, * * *”.

⁸ *Interstate Commerce Commission v. Louisville & Nashville R. R.*, 227 U. S. 88, 33 Sup. Ct. 185 (1913); *United States v. Abeline & Southern Ry.*, 265 U. S. 274, 44 Sup. Ct. 565 (1924); *Florida v. United States*, 282 U. S. 194, 51 Sup. Ct. 119 (1931); *United States v. Baltimore & Ohio R. R.*, 293 U. S. 454, 55 Sup. Ct. 268 (1935).

⁹ *Morgan v. United States*, 298 U. S. 468, 56 Sup. Ct. 906 (1936); *Morgan v. United States*, — U. S. —, 58 Sup. Ct. 773 (1938).

¹⁰ *Los Angeles Gas and Electric Corp. v. Railway Commission*, 289 U. S. 287, 53 Sup. Ct. 637 (1933); *West Ohio Gas Co. v. Public Utilities Commission*, (No. 1), 294 U. S. 79, 55 Sup. Ct. 316 (1935); *West Ohio Gas Co. v. Public Utilities Commission*, (No. 2), 294 U. S. 79, 55 Sup. Ct. 332 (1935); *St. Joseph Stock Yards v. United States*, 298 U. S. 38, 56 Sup. Ct. 720 (1936); *Ohio Bell Telephone Co. v. Public Utilities Commission*, 301 U. S. 292, 57 Sup. Ct. 724 (1937); *Railway Commission of California v. Pacific Gas and Electric Co.*, 302 U. S. 388, 58 Sup. Ct. 338 (1938).

¹¹ *Tagg Bros. and Moorhead v. United States*, 280 U. S. 420, 433, 50 Sup. Ct. 220, —, (1930) held that a notice from the Secretary of Agriculture informing market agencies of a hearing * * * to inquire into the reasonableness of a new schedule of rates, * * * and appraising them that they would have the “right to appear and show cause why a further order in respect to said schedule of rates and charges should not be made * * *” was sufficient to put such respondents on notice that rates lower than those in either the proposed or existing schedules might be fixed by the Secretary under 306 (e), and 310, * * *. *Morgan v. United States*, 298 U. S. 468, 56 Sup. Ct. 906 (1936); *Railway Commission of California v. Pacific Gas and Electric Co.*, 302 U. S. 388, 58 Sup. Ct. 334 (1938).

¹² *Morgan v. United States*, 298 U. S. 468, 56 Sup. Ct. 906 (1936).

¹³ *Low Wah Suey v. Backus*, 225 U. S. 460, 32 Sup. Ct. 734 (1912); *United States v. Abeline & Southern Ry.*, 265 U. S. 274, 44 Sup. Ct. 565 (1924); *Florida v. United States*, 282 U. S. 194, 32 Sup. Ct. 734 (1931); *West Ohio Gas Co. v. Public Utilities Commission*, (No. 1), 294 U. S. 63, 55 Sup.

only the right to present evidence but to know the claims of the opposing party and to be given an opportunity to meet them.¹⁴ The hearing is the hearing of evidence and argument, and the one who decides is bound in good conscience to be guided by that alone and to reach his conclusions uninfluenced by extraneous considerations. If the one who determines the facts which underlie the order has not considered the evidence or argument, it is obvious that a hearing has not been granted.¹⁵ However, a mere error in formal procedure will not invalidate an order,¹⁶ but such an order must be set aside if it rests upon an erroneous rule of law or is based upon a finding made without evidence or upon evidence which clearly does not support it.¹⁷

It is manifest that the court intends that in an administrative proceeding of a *quasi*-judicial nature, the liberty and property of the citizen shall be protected by the rudimentary requirements of a fair trial.¹⁸ It does not intend to lay down a hard and fast rule concerning

Ct. 316 (1935); *St. Joseph Stock Yards v. United States*, 298 U. S. 38, 56 Sup. Ct. 720 (1936); *Morgan v. United States*, 298 U. S. 468, 56 Sup. Ct. 906 (1936).

¹⁴ *Railway Commission of California v. Pacific Gas and Electric Co.*, 302 U. S. 388, 58 Sup. Ct. 338 (1938).

¹⁵ *Morgan v. United States*, 298 U. S. 468, 481, 56 Sup. Ct. 906 (1936). "The weight ascribed to the findings rests upon the assumption that the officer who makes the findings has addressed himself to the evidence and upon that evidence has conscientiously reached the conclusions which he deems it to justify. * * * It is a duty akin to that of a judge. The one who decides must hear."

¹⁶ *National Labor Relations Board v. Mackay Radio and Telegraph Co.*, — U. S. —, 58 Sup. Ct. 904, 913 (1938) held that the respondent had not been denied a "full hearing" even though there was a technical discrepancy in the wording of the summons, complaint and findings, and the trial examiner failed to prepare an intermediate report. "Oral argument was had and brief filed with the Board after which it made its findings of fact and conclusions of law. The respondent now asserts that the failure of the Board to follow its usual practice of the submission of a tentative report by the trial examiner and a hearing on exceptions to that report deprived the respondents of opportunity to call to the Board's attention the fatal variance between the allegations of the complaint and the Board's findings. What we have said sufficiently indicates that the issues and contentions of the parties were clearly defined and as no other detriment or disadvantage is claimed to have ensued from the Board's procedure, the matter is not one calling for reversal of the order. The Fifth Amendment guarantees no particular form of procedure; it protects substantial rights." *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420, 50 Sup. Ct. 220 (1930).

¹⁷ "The inquiry of a board of the character of the Interstate Commerce Commission should not be too narrowly constrained by technical rules as to the admissibility of proof. Its function is largely one of investigation and it should not be hampered in making inquiry pertaining to interstate commerce by those narrow rules which prevail in trials at common law where a strict correspondence is required between allegations and proof." *Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44, 24 Sup. Ct. 563 (1904).

¹⁸ "Although administrative action is repugnant to American tradition and principle, still such action has received the sanction of the courts. It is true that administrative control has gone too far, as in the matter of the regulation of the issuance of corporate securities. On the other hand it has not gone far enough in other fields. Administrative control, due to our congested civilization,

the procedure but indicates that substance rather than form shall prevail. Each case will stand or fall upon its own merits and the determining factor will be whether a full hearing in a substantial sense has been granted.

R. M. T.

CONSTITUTIONAL LAW—FREEDOM OF THE PRESS—FOURTEENTH AMENDMENT—POLICE POWER.—In defiance of a city ordinance¹ prohibiting the distribution of literature of any kind within the city limits without first obtaining the prescribed permission, Alma Lovell circulated certain religious magazines and pamphlets.² She was arrested and her conviction was upheld in the highest court in her state.³ On appeal to the United States Supreme Court, *held*, reversed. The ordinance is unconstitutional as abridging the freedom of the press guaranteed by the First and Fourteenth Amendments.⁴ *Lovell v. City of Griffin*, 303 U. S. 444, 58 Sup. Ct. 666 (1938).

It would seem obvious that the ordinance under consideration—"that the practice of distributing * * * literature * * * of any kind without first obtaining written permission from the city manager * * * shall be * * * punishable as an offense against the City of Griffin,"—is an unwarranted encroachment upon the guaranteed freedom of the press.⁵ Yet, surprisingly enough, although a person cannot ordinarily be restrained from publishing literature of any kind, such restraint has frequently been exercised by a strained extension of the doctrine of

is here to stay. There is one bright star left shining for the objectors. Administrative control is quasi-judicial, and in time it will become 'truly judicial in attitude, atmosphere, and spirit.'" Dickinson, *The Fear of Bureaucracy* (1928) 14 A. B. A. J. 597.

¹"That the practice of distributing * * * circulars, handbooks, advertising, or literature of any kind, * * *, within the city limits of the City of Griffin, without first obtaining written permission from the city manager of the City of Griffin, * * * shall be deemed a nuisance, and punishable as an offense against the City of Griffin." Instant case, p. 667.

²The magazine and pamphlet, called the "*Golden Age*", set forth the gospel of the "*Kingdom of Jehovah*". No permit was applied for because defendant regarded herself as sent "by Jehovah to do His work," and that such an application would have been "an act of disobedience to His commandment".

³55 Ga. App. 609, 191 S. E. 152 (1937).

⁴(a) U. S. CONSR. Amend. I. "Congress shall make no law * * * abridging the freedom of speech or of the press; * * *"

(b) U. S. CONSR. Amend. XIV. "* * * No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; * * *"

⁵See *Patterson v. Colorado*, 205 U. S. 454, 462, 27 Sup. Ct. 556, 558 (1907); *Near v. Minnesota*, 283 U. S. 697, 713, 51 Sup. Ct. 625, 630 (1931); *Grosjean v. American Press Co.*, 297 U. S. 233, 245, 56 Sup. Ct. 444, 447 (1936).