Buffalo Law Review

Volume 9 | Number 1 Article 35

10-1-1959

Constitutional Law—Constitutionality of Hospital Licensing Regulations

Buffalo Law Review

plaintiff had garages for rent, the access to which was cut off for a number of months longer than originally anticipated by street repair contractors. Recovery was denied, the court concerning itself only with the question of reasonableness in the light of the extension of time.

Abutting owners have initiated a good deal of litigation concerning parking meters as an obstruction to access, but the question has become settled in most jurisdictions, the interference being construed as reasonable provided the meters are placed primarily to control traffic[7] and not primarily for revenue.[8]

In affirming the determination of a "slight" interference with access in the present case, the Court compares the situation with that in *Jones Beach Boulevard Estate v. Moses*.[9] There, plaintiff's predecessor in title had sold land to a state park commission for use as a parkway, reserving land for driveways to permit him access to the proposed parkway. After it was built, the use of left turns was so limited by traffic regulations that in order to enter the parkway from plaintiff's property to travel north, it was necessary to drive five miles in the opposite direction before a turn around was permitted. The regulation was upheld as one which, although inconvenient to the abutter, being adopted to benefit the travelling public, would have to be borne by the abutter. As pointed out in the present case, this was a great deal more inconvenient than the interference suffered by the gas station owners. Unfortunately, the Court does not make clear how much, or what kind of interference is necessary to amount to such a substantial obstruction as to overcome the benefit to the travelling public. Apparently the threshhold lies quantitatively someplace between a few hours a day as here, and twenty-four hours a day as in the taxi stand case;[10] qualitatively, it is apparently between inconvenient traffic regulations[11] and a permanent cab stand.[12]

CONSTITUTIONALITY OF HOSPITAL LICENSING REGULATIONS

The Board of Hospitals of the City of New York, had denied petitioner's application for a license to operate a private proprietary hospital since he had not complied with new regulations of the City Hospital Code governing the maintenance and operation of private proprietary hospitals. In a proceeding to review and annul the order of the Board to discontinue operation of the hospital, the Supreme Court, Special Term, denied the application to review. Petitioner appealed to the Court of Appeals upon constitutional grounds, from an order of the Supreme Court, Appellate Division, affirming the order of the Special Term.

The regulations in question became effective October 1, 1956. While pro-

7. Cassidy v. City of Waterbury, 130 Conn. 237, 33 A.2d 142 (1943); Gilsey Buildings v. Incorporated Village of Great Neck Plaza, 170 Misc. 945, 11 N.Y.S.2d 694, *aff'd* 258 App. Div. 901, 16 N.Y.S.2d 832 (2d Dep't 1939) (*mem.*).
8. Monsour v. City of Shreveport, 194 La. 625, 194 So. 569 (1939).
9. 268 N.Y. 362, 197 N.E.2d 313 (1935).
10. *Supra* note 4.
11. *Supra* note 9.
12. *Supra* note 4.

viding for various changes in staff requirements and single room bed space, the regulations also required each bed to have a floor area of 70 square feet, in other than private rooms, where formerly the requirement was about 62.5 feet.[13] Petitioner argued that the regulations violated the equal protection clause of both the Federal and State Constitutions, since they do not equally apply to municipal and voluntary nonprofit hospitals, and are in violation of due process of law under the same provisions.[14]

In affirming the order of the Appellate Division, the Court in *Engelsher v. Jacobs*,[15] found that it was within the power of the legislature to issue regulations calculated to reach such private proprietary hospitals as a valid exercise of the police power of the state, in that such institutions deal directly with the health of the citizens of the State. Since the legislature has given the Board control over private proprietary hospitals only, and has authorized the Board to issue regulations affecting municipal or nonprofit voluntary hospitals, the legislature, in effect, has established such private hospitals as a separate class. This classification is based upon the theory that private hospitals, without regulation, are immune from governmental scrutiny, whereas municipal and voluntary hospitals enjoy no such privilege. As a class, the private hospitals are treated alike under the regulations. Since equal protection requires only that all in the same class be treated in a like manner, the equal protection clause is not offended.[16]

The validity of the new regulations is not limited by the fact that petitioner had constructed his hospital in full compliance with the laws previously in force.[17] The only limitation upon the exercise of the State's police power is that the regulations be reasonably calculated to accomplish the end sought.[18] There can be no doubt that they are calculated to promote the health and welfare of the public generally. Taking into consideration the expenditure incurred as a result of the regulations, the Court suggests that where there are two or more beds in a room, petitioner could remove one or more beds, thus incurring only a loss of profits. Since the Court could not find, as a matter of law, that the regulations were unreasonable, it decided that the Board had not acted in an arbitrary manner in refusing to issue a license to petitioner.[19]

The dissent, found it difficult to understand why considerations affecting public health should apply only to private hospitals and not to the municipal

13. This regulation would have the effect of requiring petitioners to remove approximately 125 beds in double rooms that have only 125 square feet of space.

14. N.Y. CONST. art. I §§ 6, 11; U.S. CONST. amend. XIV.

15. 5 N.Y.2d 370, 184 N.Y.S.2d 640 (1959).

16. Missouri Pacific Ry. Co. v. Mackey, 127 U.S. 205 (188); Radice v. People, 264 U.S. 292 (1924); Buck v. Bell, 274 U.S. 200 (1927); People v. Havnor, 149 N.Y. 195, 43 N.E. 541 (1896).

17. Hadacheck v. Sebastian, 239 U.S. 394 (1915); Health Dep't v. Rector, Church Wardens and Vestrymen of Trinity Church, 145 N.Y. 32, 39 N.E. 833 (1895).

18. Purity Extract and Tonic Co. v. Lynch, 226 U.S. 192 (1912); People v. Luhrs, 195 N.Y. 377, 89 N.E. 171 (1909).

19. People v. McWilliams, 185 N.Y. 92, 77 N.E. 785 (1906); People v. Creelman, 206 N.Y. 570, 100 N.E. 446 (1912).

or voluntary hospitals. Equal protection requires that the police power be exercised evenly and without discrimination.[20] Furthermore, there is a violation when the law serves the interest of a particular class instead of the general public, although the legislation is ostensibly directed to accomplish the latter.[21] The possibility that private hospitals will be motivated by their desire to increase income is not sufficient, in itself, to warrant more severe regulation of the private hospitals as compared with the other hospitals. The possibility of self-interest is as great in the municipal and voluntary hospitals where trustees or public officers are held responsible for the performance of their duties. There must be discrimination where the same act is, or is not reprehensible, depending upon who performs the act. If the regulations are based purely upon promotion of the public health, petitioner ought to be allowed to prove, upon trial, that the voluntary and municipal hospitals are not subject to similar restrictions. The petitioner should not be summarily ordered to discontinue the hospital if the patients in the other hospitals are subject to similar conditions prohibited by the regulations.

The regulations deprive petitioner of his property without due process of law, because such discrimination is not related to the public health. The fact that the regulations distinguish between single rooms in hospitals licensed before and after October 1, 1956, and make no distinction between double rooms in hospitals licensed before and after that date, is further evidence that the regulations are not entirely related to the public health. The order appealed from should be modified by eliminating the direction to discontinue operation of the hospital and remanding the matter for a trial in the nature of an alternative mandamus.

The claim that state legislation violates the equal protection provisions of the Federal and State constitutions is the last resort of constitutional arguments.[22] The dissent is argued quite logically, but logical consistency is not a requisite to the exercise of the police power:

> . . . a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience.[23]

It appears that the regulations are calculated to protect the interest of the general public. There is no evidence that the private hospitals catered to only a particular segment of the public. Therefore, if reasonable, the regulations have fulfilled the requirements of equal protection, and the question of motive should not arise. The legislature has merely recognized the need of regulation in the area of private hospitals and has limited itself to regulating

20. New York Sanitary Utilization Co. v. Department of Health, 32 Misc. 577, 67 N.Y.S. 324 (Sup. Ct. 1900), *aff'd* 61 App. Div. 106, 70 N.Y. Supp. 510 (1st Dep't 1901).
21. *Ibid.*
22. Buck v. Bell, *supra* note 15.
23. Patsone v. Pennsylvania, 232 U.S. 138, 144 (1919).

that particular area. It is not bound to extend the regulation to all the cases which it might possibly reach. As to the distinction made between private and double rooms, the balancing of the interest between the public health and the cost to petitioner might practically weigh in favor of petitioner in respect to the single rooms, and in favor of the public interest in respect to the double rooms. The fact that the removal of one bed from a double room would leave the remaining bed a floor area of 125 square feet, when viewed abstractly, would appear to be unreasonable. Although the regulations may bear heavily upon the petitioner here, petitioner must show that the regulations do an injustice to the class generally.[24] This has not been shown. It is difficult for a court of law to declare such regulations to be unreasonable, when the legislature, through its administrative agencies, has a greater knowledge of the factors that relate to the reasonableness of such regulations. Therefore, unless a clear discrimination appears, the Court cannot hold, as a matter of law, that the regulations are unreasonable.[25]

GROSS RECEIPTS TAX: APPLICATION TO FOREIGN CORPORATION

Cities in New York State having a population of one million or more are enabled to impose a gross receipts tax.[26] New York City has such a tax.[27] The requisite incidence of local activity or presence within the city, necessary to enable the city to impose this tax on the gross receipts of a foreign corporation, has been a problem in this area in recent years. In the Court of Appeals decision, *Berkshire Fine Spinning Associates, Inc. v. City of New York*,[28] an action for declaratory judgment was brought by the plaintiff, a Massachusetts corporation, which contended that the above mentioned tax law as applied to it was unconstitutional because its New York City activities constituted interstate commerce exclusively.[29] As the Court stated: "The applicable rule of law is old and simple to state but less simple to apply."[30] From the facts of each case the court must determine whether a local activity takes place and whether it is a separable business, distinct from the flow of interstate commerce or an integral part of that flow. The language of the above formula admits the existence of local activity which will not constitute an incident of taxation. The question presented is, how far can a corporation extend its activities without securing, in the eyes of the court, an advantage over locally taxed concerns?

Business wise, it is advantageous to keep close to the market. By maintain-

24. Bain Peanut Co. of Texas v. Pinson, 282 U.S. 499 (1931).
25. *Supra* note 18.
26. N.Y. GEN. CITY LAW § 24-a.
27. NEW YORK CITY ADMINISTRATIVE CODE § B46-2.0.
28. 5 N.Y.2d 347, 184 N.Y.S.2d 623 (1959).
29. The General Business and Financial Tax Laws prescribe an exclusive method of judicial review (NEW YORK CITY ADMINISTRATIVE CODE § B46-9.0), but when the jurisdiction of the taxing authority is challenged on constitutional grounds, that the statute is unconstitutional or by its own terms does not apply an action for declaratory judgment may be maintained. (M & M Transportation Co. v. City of New York, — Misc. —, 84 N.Y.S.2d 128 (1948).
30. *Supra* note 28 at 354, 184 N.Y.S.2d 623, 628 (1959).