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CONSTITUTIONAL LAW - VALIDITY OF RENT PROVISIONS OF EMERGENCY PRICE CONTROL ACT

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CONSTITUTIONAL LAW — VALIDITY OF RENT PROVISIONS OF EMERGENCY PRICE CONTROL ACT — The administrator of the Office of Price Administration brought an action in a federal district court to enjoin defendant from violating the rent provisions of the Emergency Price Control Act of 1942,[1] and orders and regulations issued pursuant thereto. Defendant, by way of counterclaim, challenged the constitutionality of the act and Regulation No. 10[2] and sought an injunction restraining plaintiff from enforcing against her the provisions of the act, from interfering with the use and occupancy of her premises and her right to invoke the jurisdiction of the state courts, and requesting the suspension of the penal provisions of the act until she could test its constitutionality. Defendant asked in the alternative that the court appoint appraisers to appraise her property and fix a fair rent. *Held,* defendant is not entitled to relief upon the counterclaim. The EPCA is constitutional in its entirety. *Henderson v. Kimmel,* (D. C. Kan. 1942) 47 F. Supp. 635.

The principal case is noteworthy as the first federal decision involving the constitutionality of the rent control provisions of the EPCA. In sustaining the act in the face of varied attacks, the court reached the expected result. The war powers of Congress were declared to furnish the necessary constitutional basis for the act, which has been characterized by the Supreme Court as a "statute born of the exigencies of war."[3] Granting this proposition, which is well buttressed by judicial precedent,[4] it was objected that the act is repugnant

[1] 56 Stat. L. 23 (1942), 50 U. S. C. A. (Supp. 1942), Appendix, § 901 et seq., hereafter referred to as the EPCA or the act. Sec. 205 (a) authorizes such a suit.

[2] 7 FED. REG. 4069 (1942).

[3] Scripps-Howard Radio v. Federal Communications Commission, 316 U. S. 4 at 17, 62 S. Ct. 875 (1942). The EPCA does not purport to be an exercise of the power of Congress to tax and spend to provide for the general welfare. Although some writers have favored a broad interpretation of the general welfare clause so as to permit Congress, apart from its taxing and spending power, to provide for the general welfare, authority is lacking for such a proposition. And since strictly intrastate activities are regulated and controlled under the act, it would seem that the power to regulate interstate commerce would not support it.

[4] The leading rent case is Block v. Hirsh, 256 U. S. 135, 41 S. Ct. 458 (1920), which sustained the Ball Rent Law of 1919, 41 Stat. L. 298. This act created in the District of Columbia a rent commission to determine whether housing rents, charges, or services were fair and reasonable, and provided for eviction controls similar to those established by the EPCA. The majority of the Court upheld the law as a police power measure justified by the emergency resulting from the recent war and

to the Fifth Amendment, which operates as a limitation on the powers of Congress, including the war powers.[5] The court disposed of this argument in a single sentence, saying, "If the Act is an appropriate means to a permitted end there is little scope for the operation of the due process clause." [6] The only case cited in support of this conclusion involved the commerce clause.[7] It would seem that the Supreme Court decisions upholding state price fixing schemes challenged under the Fourteenth Amendment lend added support,[8] since the limitations placed on Congress by the Fifth Amendment are the same as those imposed on the states by the Fourteenth Amendment.[9] Concededly, both Congress and the state legislatures are invested with a wide latitude of discretion. In the past, the criterion has been stated to be whether the legislation is reasonably related to the end sought to be achieved or whether it is unreasonable, arbitrary, or capricious.[10] The court in the principal chose to adopt this criterion. However, the Supreme Court declared in *Olsen v. Nebraska ex rel. Western Reference & Bond Assn.*[11] that it is "not concerned . . . with the wisdom, need, or appropriateness of the legislation." In all probability this statement will be literally applied by the Supreme Court in cases in which property rights are affected by legislation enacted under the war powers, and a Congressional declaration of necessity will, very properly, foreclose consideration by the court of the relation-

made no attempt to base the decision upon the war powers of Congress. See also Marcus Brown Holding Co. v. Feldman, 256 U. S. 170, 41 S. Ct. 465 (1921), and Edgar A. Levy Leasing Co. v. Siegel, 258 U. S. 242, 42 S. Ct. 289 (1921). These cases upheld New York rent control legislation against attacks based on art. 1, § 10 (contract clause) and the Fourteenth Amendment of the United States Constitution.

In cases not involving rent control, the Supreme Court has indicated the constitutionality of fixing of maximum prices as part of a war or national defense effort. See United States v. Macintosh, 283 U. S. 605 at 622, 51 S. Ct. 570 (1930); Highland v. Russell Car & Snow Plow Co., 279 U. S. 253 at 262, S. Ct. 314 (1928). Cf. Home Building & Loan Assn. v. Blaisdell, 290 U. S. 398 at 426, 54 S. Ct. 231 (1933). See also Helena Rubinstein, Inc. v. Charline's Cut Rate, (N. J. Ch. 1942) 28 A. (2d) 113, upholding the EPCA.

[5] See Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U. S. 146, 40 S. Ct. 106 (1919).

[6] Principal case, 47 F. Supp. at 642.

[7] Virginian Ry. v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592 (1936). See also, Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381, 60 S. Ct. 907 (1939), sustaining the price-fixing provisions of the Bituminous Coal Act of 1937; United States v. Darby, 312 U. S. 100, 61 S. Ct. 451 (1940), upholding the minimum wage and maximum hour provisions of the Fair Labor Standards Act; United States v. Rock Royal Co-operative, 307 U. S. 533, 59 S. Ct. 993 (1938).

[8] West Coast Hotel Co. v. Parrish, 300 U. S. 379, 56 S. Ct. 578 (1936); Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842 (1937); Olsen v. Nebraska ex rel. Western Reference & Bond Assn., 313 U. S. 236, 61 S. Ct. 862 (1940).

[9] Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U. S. 146, 40 S. Ct. 106 (1920).

[10] See McReynolds, J., dissenting in Nebbia v. New York, 291 U. S. 502, 54 S. Ct. 505 (1934).

[11] 313 U. S. 236 at 246, 61 S. Ct. 862 (1940).

ship between the means and the end.[12] At any rate, the court in the principal case had no doubt that "rent control is necessary to the effective prosecution of the war effort." [13] As was the case with other federal regulatory legislation, the EPCA was also challenged as unlawfully delegating legislative power. In resolving this issue, the Supreme Court heretofore has examined the declared policy of Congress and the standards prescribed for the guidance of the administrative agency by which that policy is to be carried out. If these are stated with "sufficient exactness to enable those affected to understand these limits," [14] the constitutional requirements are met. The EPCA provides that rents established must be in the judgment of the administrator "generally fair and equitable" and such as will "effectuate the purposes of" the act.[15] Those purposes are enumerated in detail in section 1 (a). Prior to the issuance of any maximum rent regulation, the administrator is required to issue a declaration setting forth the necessity for such regulation.[16] So far as practicable, the administrator is required to give due consideration to rents prevailing on specified dates and to make adjustments for such relevant factors as he may deem to be of general

[12] See Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U. S. 146, 40 S. Ct. 106 (1920).

[13] Principal case, 47 F. Supp. 642. The opinion continued, "It [rent control] is necessary in order to prevent the disastrous effects of inflation, to protect the families of men in the armed service, to attract workers to vital defense areas, to bring about a fair distribution of essential labor among the several defense areas, and to insure defense workers of housing accommodations at rentals that are not exorbitant. In short, it is necessary to maintain civilian morale and insure the production of necessary armaments. It must follow that Congress has the power to regulate the costs of commodities and facilities in order to insure the essential armaments, prevent defeat, and insure the victory." See also as to the necessity of rent control, § 1 (a) of the EPCA; Borders, "Emergency Rent Control," 9 LAW & CONTEMP. PROB. 107 (1942).

In a complaint recently filed in the Emergency Court of Appeals (Taylor v. Henderson, No. 10) it is argued that even though the rent control provisions are within the war powers of Congress, they are not in the interests of national security or necessary to the effective prosecution of the war but are in fact detrimental to such interest. Included in the reasons given in support of the argument are the following: "(1) in order to put into effect the legislation, 'the time and thought of literally millions of people have been and are taken from other activities . . .'; (2) the added cost to landlords having to travel to Washington to prosecute their appeals is detrimental; (3) the effect of the entire rent program is inflationary, for it results in a non-taxable increase in the funds of tenants and a decrease in the landlord's taxable income, resulting in a loss of revenue which, when added to the cost of administering the Act, materially increases the national debt; (4) the 'dissension, strife, and burden, caused by the overthrow of established law and the impairing of contractual rights and obligations are harmful to the war effort'." 11 U. S. L. WEEK 2338:3 (1942). The rejection of these contentions seems certain in view of the principal case and the decisions cited in notes 5 and 6, supra.

[14] United States v. Rock Royal Co-operative, 307 U. S. 533 at 574, 59 S. Ct. 993 (1938).

[15] EPCA, § 2 (b).

[16] Id.

applicability.[17] These standards seem fully as definite as those enunciated in comparable legislation and upheld by the Supreme Court in the cases noted below.[18] Next discussed by the court in the principal case was the validity of the review provisions of the EPCA. Here the chief contention of the defendant was that the regulations resulted in confiscation and that upon this issue she was entitled to an independent judicial determination of both facts and law. The court replied that the act provided for such a review. By this construction, which seems somewhat strained,[19] the court avoided any consideration of the much-criticized *Ben Avon* doctrine.[20] It is submitted that recent Supreme Court decisions indicate that the standard of review prescribed in the EPCA is consonant with due process of law in the procedural sense even though the act be construed to deny a review of the facts by the Emergency Court of Appeals.[21] As has been observed by one writer,[22] any constitutional objections to the exclusive jurisdiction and stay provisions [23] must be based upon the doctrine of

[17] Id.

[18] United States v. Rock Royal Co-operative, 307 U. S. 533, 59 S. Ct. 993 (1938); H. P. Hood & Sons v. United States, 307 U. S. 588, 59 S. Ct. 1019 (1938); Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381, 60 S. Ct. 907 (1939); Opp Cotton Mills v. Administrator, 312 U. S. 126, 61 S. Ct. 524 (1940). Cf. Panama Refining Co. v. Ryan, 293 U. S. 388, 55 S. Ct. 241 (1934), and Schechter Poultry Corp. v. United States, 295 U. S. 495, 55 S. Ct. 837 (1934).

[19] See §§ 203, 204 of the EPCA.

[20] In Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287, 40 S. Ct. 527 (1920), a state public utility act had been construed as limiting the power of a state court on review of a rate order to an inquiry as to whether the order was a reasonable exercise of administrative discretion. The Supreme Court held that since the company claimed the order would result in confiscation of its property, due process of law required an "independent judicial determination" of both facts and law. In St. Joseph Stock Yards Co. v. United States, 298 U. S. 38, 56 S. Ct. 720 (1935), the doctrine of the Ben Avon case was reaffirmed. The following articles should be consulted: Albertsworth, "Judicial Review of Administrative Action by the Federal Supreme Court," 35 HARV. L. REV. 127 (1921); Freund, "The Right to a Judicial Review in Rate Controversies," 27 W. VA. L. Q. 207 (1921); Landis, "Administrative Policies and the Courts," 47 YALE L. J. 519 (1938). Cf. Crowell v. Benson, 285 U. S. 22, 52 S. Ct. 285 (1932).

[21] Railroad Commission of Texas v. Rowan & Nichols Oil Co., 310 U. S. 573, 60 S. Ct. 1021 (1940); Federal Power Commission v. Natural Gas Pipeline Co. of America, 315 U. S. 575, 62 S. Ct. 736 (1942). It seems difficult to reconcile these cases with the Ben Avon case. Furthermore, it has been observed that in the case of price or rent regulation the issue of confiscation is distinguishable from that arising in the public utility field since the EPCA does not impose a duty to sell or rent. Sec. 4 (d). See Freund, "The Emergency Price Control Act of 1942: Constitutional Issues," 9 LAW & CONTEMP. PROB. 77 at 83 (1942).

[22] Nathanson, "The Emergency Price Control Act of 1942: Administrative Procedure and Judicial Review," 9 LAW & CONTEMP. PROB. 60 at 75 (1942).

[23] EPCA, § 204 (d), provides: "Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of

separation of powers or upon the due process clause. The former argument is without merit in view of the established power of Congress to define, limit or entirely withdraw the jurisdiction of the federal courts to issue injunctions in particular classes of cases, to establish special courts, and to provide for the review of administrative orders in certain courts and their enforcement in others.[24] The due process argument resolves itself into a question whether it is reasonable for Congress to require that administrative regulations be obeyed while their validity is being tested.[25] The need for the exclusive jurisdiction provisions parallels the need for the prohibition against preliminary injunctions. Both are essential to the continuity and effectiveness of wartime rent control, for the consequences of a prolonged suspension of ceiling regulations might well be disastrous.[26] The opportunities afforded aggrieved parties to secure an expeditious determination of the merits of their objections appear to satisfy any requirements of due process.[27] The decision in the principal case sheds little light on the problem of whether an assertion of unconstitutionality of the entire statute creating an administrative body precludes the application of the doctrine of exhaustion of administrative remedies.[28] Although it has been held that a recourse to administrative channels must precede an attack upon the jurisdiction of the administrative agency,[29] a different rule might well obtain where the constitutionality of the whole act is in issue.[30]

George T. Schilling

any such regulation, order or price schedule, or to restrain or enjoin the enforcement of any such provision." These provisions bar in enforcement proceedings any defense based on the invalidity of the regulations, but they do not prevent a consideration of the constitutionality of the act itself although the doctrine of exhaustion of administrative remedies may do so. See the last two sentences in the body of this note.

Sec. 204 (c) prohibits the Emergency Court of Appeals from issuing temporary injunctions. Sec. 204 (b) postpones the effectiveness of its final judgments pending opportunity for review in the Supreme Court of the United States.

[24] See Nathanson, "The Emergency Price Control Act of 1942: Administrative Procedure and Judicial Review," 9 LAW & CONTEMP. PROB. 60 at 75-76, notes 69, 70, 71 (1942).

[25] See Scripps-Howard Radio v. Federal Communications Commission, 316 U. S. 4, 62 S. Ct. 875 (1942).

[26] Principal case. As there noted, a court would be warranted in refusing to issue a preliminary injunction restraining OPA regulations even if there were no statutory prohibitions, since the threatened private injury is outweighed by the possible public injury involved. See Block v. Hirsh, 256 U. S. 135, 41 S. Ct. 458 (1921).

[27] See Rava, "Procedure in Emergency Price Fixing," 40 MICH. L. REV. 937 (1942).

[28] Defendant had not pursued her administrative remedies. The court stated, "It, therefore, may be doubted that Kimmel is entitled to press her constitutional challenge as a basis for relief upon her counterclaim." Holding the act to be constitutional, the court then said "it follows" that relief should have been sought through the prescribed administrative channels. Principal case, 47 F. Supp. at 645. See generally, Berger, "Exhaustion of Administrative Remedies," 48 YALE L. J. 981 (1939).

[29] Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 58 S. Ct. 459 (1938).

[30] Thus, prior to the validation of the National Labor Relations Act by the

Supreme Court, several lower federal courts granted injunctions on the ground the act was unconstitutional. See the cases cited by Berger, "Exhaustion of Administrative Remedies," 48 YALE L. J. 981 at 995, note 78 (1939).

Several decisions involving the EPCA have been handed down since the principal case. None are in conflict with it. See PIKE AND FISCHER, OPA SERVICE, ¶ 620 et seq.