

United States Supreme Court

A.L.A. SCHECHTER POULTRY CORPORATION v. UNITED STATES(1935)

No. 854

Argued: Decided: May 27, 1935

(Excerpts)

Phrase 'unfair methods of competition' within Federal Trade Commission Act has broader meaning than common-law term 'unfair competition,' but its scope cannot be precisely defined, and what constitutes 'unfair methods of competition' must be determined in particular instances, upon evidence, in light of particular competitive conditions and of what is found to be a specific and substantial public interest (Federal Trade Commission Act 5 (15 USCA 45)).[A.L.A. Schechter Poultry Corporation v. United States 295 U.S. 495 (1935)]

[295 U.S. 495, 500] Messrs. Joseph Heller, Frederick H. Wood, and Jacob E. Heller, all of New York City, for petitioner A.L.A. Schechter Corporation and others.

[295 U.S. 495, 508] The Attorney General and Messrs. Stanley F. Reed, Sol. Gen., and Donald R. Richberg, both of Washington, D.C., for the United States.

[295 U.S. 495, 519]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

Petitioners in No. 854 were convicted in the District Court of the United States for the Eastern District of New York on eighteen counts of an indictment charging violations of what is known as the 'Live Poultry Code,'¹ and on an additional count for conspiracy to commit such violations. [2](#) By demurrer to the indictment and appropriate motions on the trial, the defendants contended (1) that the code had been adopted pursuant to an unconstitutional delegation by Congress of legislative power; (2) that it attempted to regulate intrastate transactions which lay outside the authority of Congress; and (3) that in certain provisions it was repugnant to the due process clause of the Fifth Amendment. [295 U.S. 495, 520] 'The Circuit Court of Appeals sustained the conviction on the conspiracy count and on sixteen counts for violation of the code, but reversed the conviction on two counts which charged violation of requirements as to minimum wages and maximum hours of labor, as these were not deemed to be within the congressional power of regulation. 76 F.(2d) 617. On the respective applications of the defendants (No. 854) and of the government (No. 864), this Court granted writs of certiorari April 15, 1935. 295 U.S. 723 , 55 S.Ct. 651, 79 L.Ed. --.

New York City is the largest live poultry market in the United States. Ninety-six per cent. of the live poultry there marketed comes from other states. Three-fourths of this amount arrives by rail and is consigned to commission men or receivers. Most of these freight shipments (about 75 per cent.) come in at the Manhattan Terminal of the New York Central Railroad, and the remainder at one of the four terminals in New Jersey serving New York City. The commission men transact by far the greater part of the business on a commission basis, representing the shippers as agents, and remitting to them the proceeds of sale, less commissions, freight, and handling charges. Otherwise, they buy for their own account. They sell to slaughterhouse operators who are also called marketmen.

The defendants are slaughterhouse operators of the latter class. A.L. A. Schechter Poultry Corporation and Schechter Live Poultry Market are corporations conducting wholesale poultry slaughterhouse markets in Brooklyn, New York City. Joseph Schechter operated the latter corporation and also guaranteed the credits of the former corporation, which was operated by Martin, Alex, and Aaron Schechter. Defendants ordinarily purchase their live poultry from commission men at the West Washington Market in New York City or at the railroad terminals serving the city, but occasionally they purchase from commission men in Philadelphia. They buy the [295 U.S. 495, 521] poultry for slaughter and resale. After the poultry is trucked to their slaughterhouse markets in Brooklyn, it is there sold, usually within twenty-four hours, to retail poultry dealers and butchers who sell directly to consumers. The poultry purchased from defendants is immediately slaughtered, prior to delivery, by shochtim in defendants' employ. Defendants do not sell poultry in interstate commerce.

The 'Live Poultry Code' was promulgated under section 3 of the National Industrial Recovery Act. [3](#) That section, the pertinent provisions of which are set forth in the margin,⁴ authorizes the President to approve 'codes of [295 U.S. 495, 522] fair competition.' SUCH A CODE may be approved for a trade or industry, upon application by one or more trade or industrial associations or groups, if the President finds (1) that such associations or groups 'impose no inequitable restrictions on admission to membership therein and are truly representative,' and (2) that such codes are not designed 'to promote monopolies or to eliminate or oppress small enterprises and will not operate to discrimi-

___ '(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title (chapter); and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

'(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section. ...

'(f) When a code of fair competition has been approved or prescribed by the President under this title (chapter), any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than \$500 for each offense, and each day such violation continues shall be deemed a separate offense.' [295 U.S. 495, 523] nate

against them, and will tend to effectuate the policy' of title 1 of the act (15 USCA 701 et seq.). Such codes 'shall not permit monopolies or monopolistic practices.' As a condition of his approval, the President may 'impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code as the President in his discretion deems necessary to effectuate the policy herein declared.' Where such a code has not been approved, the President may prescribe one, either on his own motion or on complaint. Violation of any provision of a code (so approved or prescribed) 'in any transaction in or affecting interstate or foreign commerce' is made a misdemeanor punishable by a fine of not more than \$500 for each offense, and each day the violation continues is to be deemed a separate offense.

The 'Live Poultry Code' was approved by the President on April 13, 1934. Its divisions indicate its nature and scope. The code has eight articles entitled (1) 'purposes,' (2) 'definitions,' (3) 'hours,' (4) 'wages,' (5) 'general labor provisions,' (6) 'administration,' (7) 'trade practice provisions,' and (8) 'general.'

The declared purpose is 'To effect the policies of title I of the National Industrial Recovery Act.' The code is established as 'a code for fair competition for the live poultry industry of the metropolitan area in and about the City of New York.' That area is described as embracing the five boroughs of New York City, the counties of Rockland, Westchester, Nassau, and Suffolk in the state of New York, the counties of Hudson and Bergen in the state of New Jersey, and the county of Fairfield in the state of Connecticut.

The 'industry' is defined as including 'every person engaged in the business of selling, purchasing of re- [295 U.S. 495, 524] sale, transporting, or handling and/or slaughtering live poultry, from the time such poultry comes into the New York metropolitan area to the time it is first sold in slaughtered form,' and such 'related branches' as may from time to time be included by amendment. Employers are styled 'members of the industry,' and the term 'employee' is defined to embrace 'any and all persons engaged in the industry, however compensated,' except 'members.'

The code fixes the number of hours for workdays. It provides that no employee, with certain exceptions, shall be permitted to work in excess of forty hours in any one week, and that no employees, save as stated, 'shall be paid in any pay period less than at the rate of fifty (50) cents per hour.' The article containing 'general labor provisions' prohibits the employment of any person under 16 years of age, and declares that employees shall have the right of 'collective bargaining' and freedom of choice with respect to labor organizations, in the terms of section 7(a) of the act (15 USCA 707(a)). The minimum number of employees, who shall be employed by slaughterhouse operators, is fixed; the number being graduated according to the average volume of weekly sales.

Provision is made for administration through an 'industry advisory committee,' to be selected by trade associations and members of the industry, and a 'code supervisor,' to be appointed, with the approval of the committee, by agreement between the Secretary of Agriculture and the Administrator for Industrial Recovery. The expenses of administration are to be borne by the members of the industry proportionately upon the basis of volume of business, or such other factors as the advisory committee may deem equitable, 'subject to the disapproval of the Secretary and/or Administrator.'

The seventh article, containing 'trade practice provisions,' prohibits various practices which are said to constitute 'unfair methods of competition.' The final article provides for verified reports, such as the Secretary or Administrator may require, '(1) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and (2) for the determination by the Secretary or Administrator of the extent to which the declared policy of the act is being effectuated by this code.' The members of the industry are also required to keep books and records which 'will clearly reflect all financial transactions of their respective businesses and the financial condition thereof,' and to submit weekly reports showing the range of daily prices and volume of sales' for each kind of produce.

The President approved the code by an executive order (No. 6675-A) in which he found that the application for his approval had been duly made in accordance with the provisions of title 1 of the National Industrial Recovery Act; that there had been due notice and hearings; that the code constituted 'a code of fair competition' as contemplated by the act and complied with its pertinent provisions, including clauses (1) and (2) of subsection (a) of section 3 of title 1 (15 USCA 703(a)(1, 2)); and that the code would tend 'to effectuate the policy of Congress as declared in section 1 of Title I.' [5](#) [295 U.S. 495, 526] The executive order also recited that the Secretary of Agriculture and the Administrator of the National Industrial Recovery Act had rendered separate reports as to the provisions within their respective jurisdictions. The Secretary of Agriculture reported that the provisions of the code 'establishing standards of fair competition (a) are regulations of transactions in or affecting the current of interstate and/or foreign commerce and (b) are reasonable,' and also that the code would tend to effectuate the policy declared in title 1 of the act, as set forth in section 1 (15 USCA 701). The report of the Administrator for Industrial Recovery dealt with wages, hours of labor, and other labor provisions. [6](#)

Of the eighteen counts of the indictment upon which the defendants were convicted, aside from the count for conspiracy, two counts charged violation of the minimum wage and maximum hour provisions of the code, and ten counts were for violation of the requirement (found in the 'trade practice provisions') of 'straight killing.' This requirement was really one of 'straight' selling. The term 'straight killing' was defined in the code as 'the practice of requiring persons purchasing poultry for resale to accept the run of any half coop, coop, or coops, as purchased by slaughterhouse operators, except for culls.' [7](#) The charges in the ten counts, respectively, were [295 U.S. 495, 528] that the defendants in selling to retail dealers and butchers had permitted 'selections of individual chickens taken from particular coops and half coops.'

Of the other six counts, one charged the sale to a butcher of an unfit chicken; two counts charged the making of sales without having the poultry inspected or approved in accordance with regulations or ordinances of the city of New York; two counts charged the making of false reports or the failure to make reports relating to the range of daily prices and volume of sales for certain periods; and the remaining count was for sales to slaughterers or dealers who were without licenses required by the ordinances and regulations of the city of New York.

First. Two preliminary points are stressed by the government with respect to the appropriate approach to the important questions presented. We are told that the provision of the statute authorizing the adoption of codes must be viewed in the light of the grave national crisis with which Congress was confronted. Undoubtedly, the conditions to which power is addressed are always to be considered when the exercise of power is challenged. Extraordinary conditions

may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power. 8The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the national government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the [295 U.S. 495, 529] imposed limits because they believe that more or different power is necessary. Such assertions of extraconstitutional authority were anticipated and precluded by the explicit terms of the Tenth Amendment- 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

The further point is urged that the national crisis demanded a broad and intensive co-operative effort by those engaged in trade and industry, and that this necessary co-operation was sought to be fostered by permitting them to initiate the adoption of codes. But the statutory plan is not simply one for voluntary effort. It does not seek merely to endow voluntary trade or industrial associations or groups with privileges or immunities. It involves the coercive exercise of the lawmaking power. The codes of fair competition which the statute attempts to authorize are codes of laws. If valid, they place all persons within their reach under the obligation of positive law, binding equally those who assent and those who do not assent. Violations of the provisions of the codes are punishable as crimes.

Second. The Question of the Delegation of Legislative Power.-We recently had occasion to review the pertinent decisions and the general principles which govern the determination of this question. *Panama Refining Company v. Ryan*, 293 U.S. 388 , 55 S.Ct. 241, 79 L.Ed . 446. The Constitution provides that 'All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.' Article 1, 1. And the Congress is authorized 'To make all Laws which shall be necessary and proper for carrying into Execution' its general powers. Article 1, 8, par. 18. The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting [295 U.S. 495, 530] legislation to complex conditions involving a host of details with which the national Legislature cannot deal directly. We pointed out in the *Panama Refining Company Case* that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. But we said that the constant recognition of the necessity and validity

of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained. *Id.*, 293 U.S. 388 , page 421, 55 S.Ct. 241.

Accordingly, we look to the statute to see whether Congress has overstepped these limitations-whether Congress in authorizing 'codes of fair competition' has itself established the standards of legal obligation, thus performing its essential legislative function, or, by the failure to enact such standards, has attempted to transfer that function to others.

The aspect in which the question is now presented is distinct from that which was before us in the case of the Panama Refining Company. There the subject of the statutory prohibition was defined. National Industrial Recovery Act, 9(c), 15 USCA 709(c). That subject was the transportation in interstate and foreign commerce of petroleum and petroleum products which are produced or withdrawn from storage in excess of the amount permitted by state authority. The question was with respect to the range of discretion given to the President in prohibiting that transportation. *Id.*, 293 U.S. 388 , pages 414, 415, 430, 55 S.Ct. 241. As to the 'codes of fair competition,' under section 3 of the act, the question is more funda- [295 U.S. 495, 531] mental. It is whether there is any adequate definition of the subject to which the codes are to be addressed.

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