HOW FAR TO EXTEND PRIVILEGE AND IMMUNITY CLAUSE OF COMMUNIST CONTROL ACT OF 1954

Claim of Albertson, Matter of Communist Party
8 N.Y.2d 77, 168 N.E.2d 242 (1960)[1]

Albertson brought this proceeding to recover unemployment compensation under the New York Unemployment Insurance Law.[2] He was employed for part of his base period with Communist organizations, which employment was essential to qualify him for unemployment benefits.[3] The Unemployment Insurance Appeal Board denied the benefits to him on the ground that the Communist organizations for whom he worked could not be considered contributing employers under the New York Unemployment Insurance Law in light of section 3 of the Communist Control Act of 1954.[4] This determination was reversed by the supreme court, appellate division, and remitted to the Appeal Board for further proceedings; Albertson appealed directly to the court of appeals which held that he was entitled to the benefits because his employment with the Communist Party had terminated before it was removed from the list of contributing employers under the New York Unemployment Insurance Law. More importantly, in deciding the second issue before the court, it was held that as a result of the Communist Control Act of 1954, the Communist Party is not entitled to be recognized as an employer under the Unemployment Insurance Act of New York, and is not entitled to registration on the official roll of employers. The court interpreted status and enrollment of an employer as a right denied the Communist Party by the act of 1954.

Section 3 of the Communist Control Act of 1954 reads in part:

> The Communist Party . . . [is] not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party of any subsidiary organization by reason of the laws of the United States or any political subdivision thereof are hereby terminated.[5]

The important determination is whether Congress intended this section of the act to preclude the Communist Party from qualifying as contributors to joint federal-state unemployment compensation funds, thereby denying its

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[1] *Cert. granted,* 29 U.S.L. Week 3180 (U.S. Dec. 12, 1960) (No. 495).

[2] N.Y. Lab. Law §§ 500-640.

[3] The New York Unemployment Insurance Law does not exclude the Communist Party as a possible employer under the law. However, it has been stated in an opinion that since the Communist Party is a conspiracy against our Government, it should not be permitted to participate in the unemployment insurance program operated by the Government of the United States and the state of New York. Op. Atty. Gen. of N.Y. 239 (1957).

[4] Communist Control Act § 3, 68 Stat. 776 (1954), 50 U.S.C. § 842 (1958).

[5] *Ibid.*

employees unemployment benefits. The solution to this problem turns on the consideration of whether or not the payment of the tax is a right, privilege, or immunity within the meaning of the Communist Control Act. The legislative history of the act is virtually silent as to how Congress intended the privileges and immunities clause to be interpreted. From the finding of fact by Congress that the party should be "outlawed,"[6] it would seem that it was trying to enact as broad a deprivation as possible. Perhaps this is why there was so little debate about the specific rights, privileges, and immunities encompassed by the act. There was some mention that section 3 would deny the right of the party to be on the ballot[7] and a subsequent case has confirmed this position.[8] There was also some talk of a denial of the right to sue and the right to enter into contracts,[9] but outside of these areas, the discussion of section 3 was very general in nature. This lack of specificity in the legislative history of the act may account for the formal manner in which the court has approached the instant case.

The majority of the court felt that status as an employer is a right denied by the act whereas the dissent felt that contributing to the unemployment insurance fund was not a right but a liability and thus not encompassed by the act at all. The approach of both the majority and the dissent seems rather formalistic in that both base their judgments on whether taxation, in the abstract sense, is to be considered a right, privilege, or immunity without placing enough emphasis on the underlying purposes of the Communist Control Act and the considerations necessitating its passage. If one is prepared to concede that a contribution to an unemployment fund is a tax,[10] then, in the abstract sense it looks more like a liability than a right, as taxation in all forms has traditionally been considered a burden or liability.[11]

This approach, however, does not get to the heart of the problem. To determine whether the statute should apply to the situation in this case —whether the decision in this case furthers the purpose of the statute—one must examine the reasons for the passage of the statute. It must also be kept

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[6] Communist Control Act § 2, 68 Stat. 775 (1954), 50 U.S.C. § 841 (1958).

[7] 100 Cong. Rec. 14713 (1954).

[8] United States v. Silverman, 132 F. Supp. 820 (D. Conn. 1955).

[9] *Supra* note 7.

[10] See Waterbury Sav. Bank v. Danaher, 128 Conn. 78, 20 A.2d 455 (1941) which is one of the many cases holding that payment of a contribution under an unemployment compensation act is a tax.

[11] See Phoenix Fire and Marine Ins. Co. v. State of Tennessee, 161 U.S. 174 (1896), a case involving a charter which granted all the rights, privileges, and immunities of one insurance company to its successor. The issue in the case was whether these words could be interpreted as a transfer of a current exemption from taxation and the court held that the words were full and ample to grant such an exemption. See also Buchanan v. Knoxville and O.R.R., 71 Fed. 324 (6th Cir. 1896) which held that the term immunity was an apt one to describe the right of a railroad to succeed to an exemption from taxation enjoyed by its predecessor. In *In re* Cassaretakis, 289 N.Y. 119, 127, 44 N.E.2d 391, 394 (1942) paying money into the New York unemployment fund was termed an "obligation" or a "duty."

in mind that the activities of the Communist Party have been continually restricted, particularly in the last twenty years, so that recognition of any sort, even if it entails payment of a tax, may be considered by the Party itself to be a right, privilege, or immunity within the meaning of the act. An early attempt by Congress to control Communist influence in this country resulted in the Smith Act of 1940,[12] which prohibits both advocacy of the overthrow of the government by force and violence, and knowing membership in any group which so advocates. In 1950 the Internal Security Act,[13] aimed more directly at Communist organizations, was passed; this act distinguishes Communist front organizations from Communist action organizations, but still requires both to register and file annual reports with the Attorney General giving complete details as to their officers and funds. The next effort of Congress to deal with the Communist Party was the Communist Control Act of 1954, which was an outgrowth of two bills, both proposed amendments to the Internal Security Act of 1950. The first bill added the category of Communist-infiltrated organizations to the aforementioned Communist front and Communist action organizations.[14] This new category was especially designed to prevent infiltration by Communists into labor unions and to remove them from positions of leadership in the unions. The other bill made it a crime to be a member of the Communist Party, punishable by a $10,000 fine and up to five years imprisonment.[15] The House amended this bill to read that "the Communist Party is deprived of all the rights, privileges, and immunities which have heretofore been granted the Party."[16] The criminal provisions of the bill were altered by the conference committee so that the punishment provided by the Internal Security Act of 1950 would be applicable also to the Communist infiltrated organizations.[17] These acts illustrate a general Congressional policy of suppression of the freedom of operation of the Communist Party in the United States. Although one of the reasons for passage of this act was to prevent Communist infiltration in labor unions, a particularly prevalent evil at that time,[18] the act also embodies a more general policy against Communist influence in all areas. This policy is made most apparent by Congress' justification of the act by its finding that the party's existence presents "a clear, present and continuing danger to the security of the United States" and that it "should be outlawed."[19]

The question then is whether prohibiting the Communist Party from being an employer under the New York Unemployment Insurance Law

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12 Smith Act, 54 Stat. 670 (1940), 18 U.S.C. § 2385 (1940).

13 Internal Security Act, 64 Stat. 987 (1950), 50 U.S.C. §§ 781-98 (1958).

14 S. 3706, 83d Cong., 2d Sess. (1954). This bill was enacted into law as § 7 of the Communist Control Act, 68 Stat. 777 (1954), 50 U.S.C. § 782 (1958).

15 For the text of the original amendment, see 100 Cong. Rec. 14722 (1954).

16 H.R. 9838, 83d Cong., 2d Sess. (1954). This amendment now constitutes § 3 of the Communist Control Act, 68 Stat. 776 (1954), 50 U.S.C. § 842 (1958).

17 The provision, as amended, became § 4 of the Communist Control Act, 68 Stat. 776 (1954), 50 U.S.C. § 843 (1958).

18 See 100 Cong. Rec. 14099 (1954).

19 68 Stat. 775 (1954), 50 U.S.C. § 841 (1958).

furthers the underlying purpose of the Communist Control Act of curtailing activities of the Party throughout the United States. It seems that granting the Party any status whatsoever frustrates the apparent intentions of Congress. The instant decision tends to make employment with the Communist Party less attractive in that it is unable to offer unemployment insurance benefits to its employees. This in turn diminishes one lucrative source for recruitment of active party members and makes it more difficult for the Party to hire employees of any type. If the act was intended to put the Communist Party "outside the pale of the law," as Senator Ferguson suggested,[20] it should have been worded in more unqualified terms.[21] It cannot be denied, however, that the act and the circumstances surrounding its passage, clearly evince a desire on the part of the legislature to inhibit the activity of the Communist Party in this country, and since this decision furthers that purpose, it should be upheld as a correct application of the act.

[20] 100 Cong. Rec. 14719 (1954), "What the bill really does is put the Communist Party, which is a conspiracy, outside the pale of the law, where it should be."

[21] Texas Rev. Civ. Stat. Ann., art. 6889-3A (Supp. 1954). State statutes attempting to legislate the Communist Party out of existence have been much more specific. This unequivocal Texas statute reads in part: "It shall be unlawful for [the Communist] Party . . . to exist, function, or operate in the state of Texas. . . . All funds, records, and other property belonging to such Party . . . shall be seized by and forfeited to the State of Texas, to escheat to the State as in the case of a person dying without heirs."