No. 543 - October Term, 1964

Nicholas deB. Katzenbach, As Acting Attorney General of the United States, et al., Appellants,	)	Appeal from the United States District Court for the Northern District of Alabama.
vs.	)	
Ollie McClung, Sr., et al.	)	

[December , 1964.]

MR. JUSTICE CLARK delivered the opinion of the Court.

This case was argued with No. 515, Heart of Atlanta Motel v. United States, et al., decided this date, and in which we have upheld the constitutional validity of Title II of the Civil Rights Act of 1964 from an attack by hotels, motels and like establishments. This complaint for ~~injunction~~ INJUNCTIVE RELIEF AGAINST APPELLANTS attacks the Act from the standpoint of a restaurant, known as Ollie's Barbecue and situated in Birmingham, Alabama. The Act places restaurants under its proscription if the restaurant's discriminatory practice is supported by state action, as defined therein, or if it serves or appears to serve interstate travelers or a substantial portion of the food which it serves has moved in interstate commerce. The case was heard by a three judge United States District Court and the ~~appellants were enjoined~~ INJUNCTION WAS ISSUED RESTRAINING APPELLANTS from enforcing the Act against the restaurant. ___ F. Supp. ___.

On direct appeal, 28 U.S.C. 1212, 1253, we noted probable jurisdiction. U.S. . We now reverse the judgment.

1. The Motion to Dismiss.

The appellants moved in the District Court to dismiss the Complaint for want of equity jurisdiction and that claim is pressed here. The ground is that no threat of enforcement against the appellees is present here nor is there any allegation of irreparable injury. It is true that ordinarily equity will not interfere in such cases. However, we might consider this complaint to be an application for a declaratory judgment under 28 U. S. C. § 2201 and § 2202. While in declaratory judgment actions, Rule 57 of the Federal Rules of Civil Procedure permits declaratory relief even though another adequate remedy exists, it should not be granted where a special statutory proceeding has been provided. See Advisory Committee Notes on Rule 57. Title II provides a statutory proceeding for the determination of rights and duties thereunder. § 201. Courts should, therefore, ordinarily exercise their discretion in such cases against the exercise of jurisdiction.

The present case, however, is in a unique position. The interference with governmental action has occurred and the constitutional question is before us in the companion case of Heart of Atlanta Motel as well

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2. The Facts.

~~Ex~~ Ollie's Barbecue is a family operated restaurant specializing in barbecued meats and homemade pies, with a capacity for some 220 customers. It is located on a state highway some eleven blocks from an interstate one and a somewhat greater distance from the railroad and bus stations. The restaurant caters to a family and white collar trade with a take out service for Negroes. It ~~employed~~ employs 36 persons, two thirds of whom are Negroes.

In the twelve months preceding the passage of the Act the restaurant purchased locally approximately $150,000 worth of food, 55% of which was meat ($69,783). It was bought from the local branch of a packing concern and all of it came from without the state. The District Court found that a substantial portion of the food served in the restaurant had moved in interstate commerce.

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The restaurant has refused etc

as in this case. It is important x that a decision on the constitutionality of the Act as applied in these cases be announced as quickly as possible. For these reas ons we have concluded, with the above caveat, that the denial of discretionary declaratory relief is not required here.

→ 2 The facts.

The restaurant has refused to serve Negroes in its dining accommodations since its original opening in 1927. The District Court found that if it was required to do so the restaurant would lose a substantial amount of business and that since July 2, 1964 it had been operating in violation of the Act.

On the merits the District Court held that the Act could not be applied under the Fourteenth Amendment because it was conceded that the State of Alabama was not involved in the refusal of the restaurant to serve Negroes. It was also admitted that the Thirteenth Amendment was neither authority for nor prohibitory of the Act. As to the Commerce Clause, the Court found that it was "an express grant of power to Congress to regulate interstate commerce which consists of the movement of persons, goods or information from one State to another"; and it found that the clause was also a grant of power "to regulate

intrastate activities, but only to the extent that action on its part is necessary or appropriate to the effective execution of its expressly granted power to regulate interstate commerce. There must be, it said, a close and substantial relation between local activities and interstate commerce which requires control of the former in the protection of ~~kk~~ the latter. The court concluded, however, that the Congress, rather than finding facts sufficient to meet this rule, legislated a conclusive presumption that the restaurant business did affect interstate commerce, if it serves or offers to serve interstate travelers or a substantial portion of the food which it serves had moved in commerce. It found no rational connection between the substantial amounts of food purchased in interstate commerce and served in the restaurant and the conclusion of Congress that interstate commerce was affected thereby. It, therefore, struck down the Act and issued the restraints prayed for.

The basic holding in Heart of Atlanta Motel, supra, answers ~~most~~ many of the contentions made by the appellees. ~~However, some questions arising out of the congressional test as to its activities "affecting commerce"~~ There we outlined the overall purpose and operational plan of Title II and found it a valid exercise of the power to regulate interstate commerce as applied to hotels and motels. In this case we consider its application to restaurants which serve the general public ~~and~~ or receive a substantial portion of the food served from other States.

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1. That opinion ~~controls~~ disposes of the challenges here that are based on the Fifth, Ninth, Tenth and Thirteenth Amendments; and, as well, the inapositeness of the Civil Rights Cases, 109 U S 3 (1883).

~~require comment. We believe that the District Court erred in concluding that on the record before it the Congress had created a conclusive presumption in that regard.~~

3 The Act As Applied.

Section 201(a) of Title II commands that all persons shall be entitled to the full and equal enjoyment of the goods and services of any place of accomodation without discrimination or segregation on the ground of race, color, religion or national origin; and §201(b) defines the establishments which are places of public accomodation if its operations affect commerce or segregation by it is supported by state action; §201(b)(2) and (c) places any "restaurant... principally engaged in selling food for consumption on the premises" under the Act "if...it serves or offers to serve interstate travelers or a substantial portion of the food which it serves ... has moved in commerce."

Ollie's Barbecue admits that it is covered by these provisions of the Act. The Government admits that the discrimination at the restaurant was not supported by the State of Alabama. There is no proof that interstate travelers frequented the restaurant. The sole question therefore narrows down to whether Title II, as applied to a restaurant receiving about $70,000 worth of the food which it sells from interstate commerce, is a valid exercise of the power of Congress to regulate that commerce. We conclude that Congress had ample basis upon which to find that racial discrimination in restaurants which purchase from outside the state a substantial portion of the food served does place substantial burdens upon interstate commerce. And, even though they are not themselves in interstate commerce, the Act is an appropriate regulation of such restaurants under the Commerce Clause to relieve those burdens and obstructions found to exist in interstate commerce and to foster, encourage and promote it.

4. Evidence Supporting Conclusion of Congress that Racial Discrimination in Restaurants Burdens Interstate Commerce.

The record before Congress is replete with testimony of both the direct and indirect burden placed on interstate commerce by racial discrimination in restaurants.. On the converse, a schedule of per capita spending of Negroes in restaurants, theaters and like establishments indicated less spending, after discounting income differences, in areas practicing discrimination. The condition was especially aggravated in the South and was attributed to discrimination. See Senate Commerce Hearings at 695. This direct link between discrimination

and commerce is the result of a reduction in the number of potential customers caused by a refusal of Negro patronage, which reduces the quantity of goods purchased through interstate channels. This "artificial restriction on the market" interferes with the flow of merchandise. Senate Commerce Hearings at 18-19; testimony of Senator Magnuson, 110 Cong Rec 7174. Not only is it axiomatic that established restaurants sell less but many new businesses are not opened because of the LEAN market resulting from the exclusionary practice.

Viewed in isolation the volume of food purchased by Ollie's Barbecue from out of state sources would have little effect upon the total foodstuff moving in interstate commerce. But the $70,000 volume purchase by this one establishment is not conclusive. As we said in Labor Board v Reliance Fuel Corp 371 US 224, 226: "Appropriate for judgment is [also] the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce." The evidence is that racial discrimination in restaurants is widespread, not confined to a single State or region but a nationwide problem. Testimony of Wilkins Moreover, discriminatory practices in one restaurant quickly spread to other restaurants. And in this day of "have money will travel" one city's discriminatory practice quickly spreads to others. Therefore when it created the individual restaurant's link to interstate commerce through THE receipt of interstate goods in substantial proportions IT WAS ENTIRELY APPROPRIATE THAT Congress judge the importance of that link as part of a complex and interrelated national pattern. As our late brother Jackson said for the Court in

Wickard v Filburn, 317 US 111 (   ):

> "That appellee's own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal regulation where, as here, his contribution, taken together with many others similarly situated, is far from trivial." at p 127-128.

Moreover the record before the Congress was filled with testimony showing that racial discrimination in restaurants was a prolific source of disputes burdening and obstructing commerce. Current events make plain that these disputes - largely arising over restaurants following discriminatory practices - have become of incredible proportions. The testimony indicated that during one period covering barely over 2 months in 1963 there were 639 demonstrations in 174 cities in 32 states and the District of Columbia. [Hearings, Committee on Judiciary, US Senate 88th Cong 1st Sess. on S. 1731 p 216.] In the eleven month period prior to April, 1964, there were 2422 racial demonstrations, 850 of which arose from disputes about discrimination in places of public accomodation. [110 Cong Rec 7980] The Mayor of Atlanta testified that "[f]ailure by Congress to take definite action at this time ... would start the same old round of squabbles and demonstrations that we have had in the past. Report of the Committee on Commerce, US Senate, on S 1732, No 872 88th Cong. 2d Sess.

Our cases show that the most immediate impact on restaurants and lunch counters has come from sit-in demonstrations. During the past 18 months ___ such cases have been filed here. These sit-ins prevent the conduct of business entirely and usually result in temporary closing. This results

of course in the elimination of purchases of out of state supplies. But the testimony indicated much more, showing "that discrimination in public accomodations and demonstrations protesting such discrimination have had serious consequences for general business conditions in numerous cities in recent years." Hearings before the Committee on Commerce, U.S. Senate, 88th Cong. 1st Sess, on S1732, Part 2, Ser. 27 at 699. Retail sales in Birmingham were off 30% during the protest riots and a negro boycott in the Spring of 1963. The Federal Reserve Bank showed during a 4 week period of 1963 that department store sales were down 15% over the same period of 1962. During the same period sales were up in cities suffering no such incidents. Atlanta suffered a somewhat similar experience [12% reduction] "after several months of intermittent demonstrations in 1960-1961. In Savannah, lunch counter demonstrations in downtown stores "cut retail sales as much as 50% in some places." In the Fall of 1962 Charlotte, N.C. was "hit by drives for desegregation of public accomodations" cutting business down from 20 to 40 percent. In Nashville a seven weeks boycott was 98% efficient. Senate Commerce Hearings at 700.

These general downturns in retail business, sparked largely by racial discrimination in eating places, if left unchecked, might well result in a serious disruption of the flow of interstate commerce. No sales, means no purchases which directly affects the movement of out of state supplies. As Congressman McCulloch, one of the managers of the bill in the House, observed "a local disturbance can affect the commerce of an entire State, region and the country. Additional Views of Congressman McCulloch et al Report of the House Judiciary Committee, 88th Cong., 1st Sess. No 914, Part 2 on HR 7152 at p.12.

During this rapidly expanding situation Congress was not required to wait the total ~~disruption of commerce~~ obstruction of commerce. As was said in Consolidated Edison Co v Labor Board, 305 US 197( ):

> "But it cannot be maintained that the exertion of federal power must await the disruption of that commerce. Congress was entitled to provide reasonable preventive measures and that was the object of the National Labor Relations Act." At p 222.

5. [The Power to Regulate Interstate Commerce Extends to Local Activities whose Regulation is Appropriate to Protect that Commerce.

Article I, Section 8, Clause 3 confers upon Congress the power "To regulate Commerce ... among the several States" and Clause 18 of the same Article grants it the power "To make all laws which shall be necessary and proper for carrying into execution the foregoing Powers..." This grant, as we have pointed out in Heart of Atlanta Motel "extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make the regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce." United States v Wrightwood Dairy Co 315 US 110, 119 [( ). Much is said about a restaurant business being local but "even if appellee's activity be local and though it may not be ~~accorded~~ regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce...." Wickard v Filburn supra at 125.