Touro Law Review

Volume 8 | Number 1 Article 38

1991

Equal Protection

tendent.[528] The court stated that "[a]voidance of salary compression as a rationale for agency action in witholding salary increases has been upheld as a legitimate exercise of managerial prerogative . . . ."[529] However, the appellate division in *Margolis* viewed the issue of salary compression as a triable issue based on the "cogent" argument of petitioner that, in his case, salary compression may factually be a sham or a ploy used to force petitioner to retire early. This would afford the TA the opportunity "to implement its policy of attrition for trainmasters."[530] Thus, in addition to reversing the lower court and reinstating Margolis' petition, the appellate division also granted petitioner's application to depose the TA employees.[531]

The use of the rational basis test in the determination of an equal protection claim involving social or economic matters is the same under both the federal and state constitutions.[532]

SECOND DEPARTMENT

Long Island Lighting Co. v. Assessor of Brookhaven[533]
(decided March 2, 1990)

Long Island Lighting Company (LILCO), a private utility company, claimed that its equal protection and due process rights under the federal and state constitutions were violated by a New York State statute[534] that precluded judicial review of whether

528. *Margolis*, 157 A.D.2d at 242, 555 N.Y.S.2d at 714. "Salary compression occurs when the Legislature enacts legislation which increases lower-level employee salaries but does not concomitantly enact legislation to increase the salaries of agency heads, with the result that lower-level employees' salaries are almost equal to, or higher than, those of their supervisors." Shattenkirk v. Finnerty, 97 A.D.2d 51, 55, 471 N.Y.S.2d 149, 153 (3d Dep't 1983)).

529. *Margolis*, 157 A.D.2d at 242, 555 N.Y.S.2d at 714 (citing Shattenkirk v. Finnerty, 97 A.D.2d 51, 471 N.Y.S.2d 149 (3d Dep't 1983)).

530. 157 A.D.2d at 242-43, 555 N.Y.S.2d at 714.

531. *Id.* at 243, 555 N.Y.S.2d at 714-15.

532. For a discussion of equal protection jurisprudence under the Federal Constitution see *supra* notes 454-57 and accompanying text.

533. 154 A.D.2d 188, 552 N.Y.S.2d 336 (2d Dep't 1990).

534. N.Y. PUB. AUTH. LAW § 1020-q (McKinney Supp. 1991).

tax assessments on the company's nuclear power plant were excessive when all other property owners were entitled to such review. The appellate court held for LILCO on both claims.[535]

The court found that the statute was unconstitutional as applied to LILCO under both state[536] and federal[537] equal protection provisions because the legislature failed to provide a rational reason for excluding LILCO from judicial review of a tax assessment.[538] The court also found that the statute was violative of LILCO's substantive due process rights under both the state[539] and federal[540] constitutions because it arbitrarily restricted the company's right to judicial review.[541]

The statute challenged by LILCO was section 1020-q(3) of the state's Public Authorities Law (LIPA Act). This statute provides that "[n]o municipality or governmental subdivision, including a school district or special district, shall be liable to the authority or any other entity for a refund of property taxes originally assessed against the Shoreham plant."[542] This statute is part of the Long Island Power Authority Act of 1986 that was enacted by the state legislature to provide the residents of Long Island "an adequate supply of gas and electricity in a reliable, efficient and economic manner."[543] To accomplish this goal, the Long Island Power Authority (LIPA) "create[d] a publicly owned power authority

535. *LILCO*, 154 A.D.2d at 195-96, 552 N.Y.S.2d at 341. The right of a taxpayer to seek judicial review in regard to a tax dispute is derived from article 7 of the state's Real Property Tax Law. *Id.*; *see* N.Y. REAL PROP. TAX LAW § 700 (McKinney 1984).

536. *Id.* at 194, 552 N.Y.S.2d at 340; *see* N.Y. CONST. art. I, § 11.

537. *LILCO*, 154 A.D.2d at 194, 552 N.Y.S.2d at 340; *see* U.S. CONST. amend. XIV, § 1.

538. *LILCO*, 154 A.D.2d at 195, 552 N.Y.S.2d at 340.

539. N.Y. CONST. art. I, § 6.

540. U.S. CONST. amend. VI.

541. *LILCO*, 154 A.D.2d at 195-96, 552 N.Y.S.2d at 341. While arbitrarily restricting the right to judicial review to contest the collection of a tax assessment seems to implicate a procedural due process violation, it is unclear how the lack of such an opportunity results in a deprivation of a substantive due process right.

542. N.Y. PUB. AUTH. LAW § 1020-q(3) (McKinney 1991).

543. *LILCO*, 154 A.D.2d at 190, 552 N.Y.S.2d at 337 (quoting N.Y. PUB. AUTH. LAW § 1020-h(1)(n) (McKinney Supp. 1991)).

which could acquire any or all of the stock or assets of the Long Island Lighting Company . . . ."[544] In 1989, the authority acquired the Shoreham nuclear power plant from LILCO.[545]

Prior to LIPA's acquisition of the Shoreham nuclear power plant, LILCO was assessed property taxes by the Town of Brookhaven, the township in which the plant was located. LILCO contended that the tax assessments by the town assessor on its plant were "excessive, unequal and unlawful."[546] The company claimed a refund in excess of 400 million dollars from overpayment of property taxes made during the tax years of 1976-1977 through 1978-1979 and 1980-1981 through 1986-1987. Fearing potential liability for a tax refund, the Shoreham-Wading River School District received permission to intervene in the proceeding and join with the Town of Brookhaven as a co-defendant.[547]

In a motion for summary judgment, the defendants claimed that a dispute of any over-assessment of property taxes was precluded by section 1020-q(3) because the clause "or any other entity" was applicable to LILCO and thus, prevented the company from asserting a tax claim. In response to defendants' claim, LILCO conceded that the section applied to it, but disputed the validity of the section itself, claiming that it was violative of the company's equal protection and substantive due process rights provided under both the state and federal constitutions.[548] While the motion was pending, LILCO commenced a separate action in federal district court against Governor Cuomo and subsequent intervenors, the Town of Brookhaven and the Shoreham-Wading River School District, alleging, *inter alia*, that the LIPA Act was facially unconstitutional under both the state and federal constitutions' equal protection and substantive due process clauses.[549] In this action, the district court held for the defen-

544. *Id.*

545. This acquisition was the result of a settlement between New York State's Governor Cuomo and LILCO. *See* Long Island Lighting Co. v. Cuomo, 888 F.2d 230, 232 (2d Cir. 1988).

546. *LILCO*, 154 A.D.2d at 190, 552 N.Y.S.2d at 337.

547. *Id.* at 190, 552 N.Y.S.2d at 337-38.

548. *Id.* at 192, 552 N.Y.S.2d at 338.

549. *Id.*

dants, ruling that section 1020-q(3) was constitutional on it face and that the provision did not apply to LILCO.[550]

At the same time, LILCO and one of its shareholders brought a third action in the Nassau County Supreme Court[551] seeking, *inter alia*, a declaratory judgment that the LIPA Act is unconstitutional. In this action, the court, relying on the federal district court's determination that the LIPA Act does not facially violate the Federal Constitution, held that the act was also not violative of the state constitution.[552]

On the basis of the federal district court decision, the trial court in the instant case denied summary judgment for the defendants. The Town of Brookhaven and the Shoreham-Wading River School District, however, disagreed with the trial court's decision and appealed their denial of summary judgment to the appellate court.

In a per curiam decision, the appellate court ruled that section 1020-q(3) is applicable to LILCO on the basis of the "plain language of the statute and the clear intent of the Legislature . . . ."[553] The court concluded, however, that the statute as applied to LILCO was violative of the equal protection and substantive due process provisions of both the state and federal constitutions.[554]

With regard to the equal protection claim, LILCO contended that the court should examine the suspect statute under strict scrutiny analysis. According to the court, under such analysis "the government must establish that the deprivation of the fundamental right is necessary to serve a compelling State interest."[555] LILCO asserted that strict scrutiny analysis is

550. *Id.* at 191-92, 552 N.Y.S.2d at 338 (quoting Long Island Lighting Co. v. Cuomo, 666 F. Supp. 370, 401-02 (N.D.N.Y. 1987), *appeal dismissed, judgment vacated in part*, 888 F.2d 230, 234 (2d Cir. 1989)).

551. *Id.* at 192; 552 N.Y.S.2d at 339 (citing Long Island Light Co. v. Long Island Power Auth., 138 Misc. 2d 745, 525 N.Y.S.2d 497 (Sup. Ct. Nassau County 1988)).

552. Long Island Lighting Co. v. Long Island Power Auth., 138 Misc. 2d 745, 753, 525 N.Y.S.2d 497, 503 (Sup. Ct. Nassau County 1988).

553. *LILCO*, 154 A.D.2d at 193, 552 N.Y.S.2d at 339.

554. *Id.*

555. *Id.* at 194, 552 N.Y.S.2d at 340 (citations omitted).

proper because the statute denies the company the fundamental right to seek judicial review. The court, however, declined to rule whether judicial review is a fundamental right deserving strict scrutiny and decided to follow the federal test enunciated in the United States Supreme Court decision *Western & Southern Insurance Company v. Board of Equalization*[556] and concluded that even under this less demanding rational basis test, the statute was violative of the state and federal constitutions' guarantee of equal protection under the law.[557]

According to this test, "[t]axing statutes, like other social and economic legislation that neither classify on the basis of a suspect class nor impair a fundamental right, must be upheld if the challenged classification is rationally related to achievement of a legitimate State purpose."[558] In the instant case, the court noted that "[t]here must [be] a rational reason for treating LILCO, as the owner of the Shoreham plant, differently from other taxpayers similarly situated, that is, the other taxpayers owning real property located within the taxing district."[559] Applying this test, the court found that the State's purpose of the law -- to give "assurance of . . . continued economic well-being to the residents of the taxing district[]"[560] -- was not a rational reason for excluding LILCO from contesting a tax dispute. While not holding section 1020-q(3) unconstitutional on its face, the court held that as applied to LILCO, the section violates the company's state and federal equal protection rights.[561]

In regard to LILCO's due process right under the state and federal constitutions, the court noted that although the state legislature has the authority to restrict the right to judicial

556. 451 U.S. 648 (1980).

557. *LILCO*, 154 A.D.2d at 194, 552 N.Y.S.2d at 340. The court noted that "[t]he opportunity to commence tax certiorari proceedings . . . is one of the vehicles through which this uniformity [of tax burden] is achieved." *Id.* at 195, 552 N.Y.S.2d at 341 (citations omitted).

558. *Id.* at 194, 552 N.Y.S.2d at 340 (citing *Western*, 451 U.S. at 657).

559. *Id.* at 195, 552 N.Y.S.2d at 340.

560. *Id.*

561. *Id.* at 195, 552 N.Y.S.2d at 341.

review,[562] "it may not alter or restrict it arbitrarily."[563] In the case at bar, the court found that section 1020-q(3) arbitrarily restricted LILCO's right to seek judicial review, thus resulting in a violation of the company's state and federal due process rights.[564]

In its decision, the court did not grant LILCO any additional protection under the state constitution than is already guaranteed under the equivalent federal provision. With regard to equal protection, the court noted that the state provision "is no broader in coverage than its Federal counterpart."[565] Similarly, the court did not grant any additional protection for LILCO under the state's substantive due process provision than is already provided under the federal provision.[566]

---

562. *Id.* at 195-96, 552 N.Y.S.2d at 341 (citing Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982); Slewett & Farber v. Board of Assessors, 80 A.D.2d 186, 438 N.Y.S.2d 544 (2d Dep't 1981), *modified*, 54 N.Y.2d 547, 430 N.E.2d 1294, 446 N.Y.S.2d 544 (1982)).

563. *Id.* at 196, 552 N.Y.S.2d at 341 (citing Colton v. Riccobono, 67 N.Y.2d 571, 496 N.E.2d 670, 505 N.Y.S.2d 581 (1986)).

564. *Id.* at 196, 552 N.Y.S.2d at 341.

565. *Id.* at 194 n. 4, 552 N.Y.S.2d 339-40 n.4 (citing Under 21, Catholic Home Bureau for Dependant Children v. City of New York, 65 N.Y.2d 344, 360 n. 6, 482 N.E.2d 1, 7 n. 6, 492 N.Y.S.2d 522, n. 6 (1985)).

566. Implicit in its decision, the appellate court concluded section 1020-q(3) was violative of the state and federal substantive due process provisions because the state legislature failed to offer a rational reason for denying LILCO access to a judicial proceeding. *Id.* at 194, 552 N.Y.S.2d at 341 (citing Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982) (holding that the state of Illinois' Fair Employment Practices Commission provision which required a fact-finding conference to convene within 120 days to process an employment discrimination claim was unconstitutional because it was not rationally related to the state's purpose of the provision of expediting such disputes); Colton v. Riccobono, 67 N.Y.2d 571, 496 N.E.2d 670, 505 N.Y.S.2d 581 (1986) (noting that a medical malpractice provision which requires, before adjudication, a panel to hear and evaluate evidence was rationally related to the state's purpose of controlling medical malpractice insurance rates)).