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Equal Protection Supreme Court Appellate Division Third Department

N.Y. Const. art. I, § 11:

No person shall be denied the equal protection of the laws of this state or any subdivision thereof.

U.S. Const. amend XIV, § 1:

No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Prodell v. New York[1]
(decided July 18, 1996)

Defendants appealed an order and judgment of the New York State Supreme Court, Albany County, that declared the Suffolk County Tax Act (hereinafter "Tax Act"), as amended in 1983,[2] unconstitutional.[3] The Suffolk County Tax Act of 1980 required towns in Suffolk County to pay for school tax refunds resulting from court ordered assessment reductions.[4] The Tax Act was amended in 1983, requiring the local school district to pay for any school tax refund that resulted from an overassessment of the Shoreham Nuclear Power Plant.[5] Specifically, the statute

1. 645 N.Y.S.2d 589 (3d Dep't 1996).

2. SUFFOLK COUNTY, N.Y., TAX ACT ch. 1018, § 3 (1983).

3. Prodell v. New York, 166 Misc. 2d 608, 630 N.Y.S.2d 880 (Sup. Ct. Albany County 1995).

4. *Prodell*, 645 N.Y.S.2d at 590. Following Shoreham's reduced assessment of June 1993, the Supreme Court ordered Suffolk County to pay a refund of over $38 million plus interest to Long Island Lighting Company, Shoreham's previous owner. *Id.*

5. SUFFOLK COUNTY, N.Y., TAX ACT ch. 1018, § 3 (1983). The Tax Act states in pertinent part:

> Such refund shall not be charged by the town to such school district, except where the assessment subject to such proceeding is applicable to property improved by a nuclear powered electrical generating facility.

provided that "upon any assessment reductions of nuclear power electrical generating facilities, the school districts in which such facilities were located would be responsible for the school tax refunds."[6] The plaintiffs, real property taxpayers from Suffolk County and the school district of Shoreham-Wading River, commenced this action challenging the constitutionality of the 1983 amendment to the Tax Act.[7] Specifically, "[p]laintiffs contend[ed] that the 1983 amendment violated the Equal Protection Clause of both the Federal[8] and New York State[9] Constitutions because it creates a classification that was arbitrary, capricious and discriminatory."[10] New York has held that protection under the Equal Protection Clause of the New York State Constitution is no broader than its federal counterpart.[11]

> In such case, the town shall charge such school district any amount of taxes collected by such school district upon such assessment in excess of the amount which would have been paid had such assessment been made as determined by such order.

Id. (emphasis omitted).

6. *Prodell*, 645 N.Y.S.2d at 590. (citing SUFFOLK COUNTY, N.Y., TAX ACT ch. 1018, § 3 (1983)).

7. *Prodell*, 645 N.Y.S.2d at 590.

8. U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

9. N.Y. CONST. art. I, § 11. This section provides:

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

Id.

10. *Prodell*, 166 Misc. 2d at 611, 630 N.Y.S.2d at 883.

11. *See* Under 21 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, 528 n.6 (1985) (citing Matter of Ester v. Walters, 56 N.Y.2d 306, 313-14 (1982)). In *Under 21*, the court examined the validity of an Executive Order issued by the mayor of New York City, which prohibited employment discrimination on the basis of sexual preference by city contractors. *Id.* at 353, 482 N.E.2d at 2, 492 N.Y.S.2d at 523. Concluding that such discrimination by private contractors is not state action, and that the city is not responsible for the private employment practices of such contractors, the court found that the mayor exceeded his authority by issuing

The controversy arose when it was discovered that a multi-million dollar school tax refund was due to the Shoreham Nuclear Power Plant's previous owner, Long Island Lighting Company.[12] The Tax Act clearly provided that school districts in which nuclear facilities were located would bear the burden of repaying the overassessments.[13] Though the language of the act was generalized, the only school district in which a nuclear power plant was located in Suffolk County was Shoreham-Wading River.[14] The Supreme Court, Albany County, held that even though the mere existence of the Shoreham Nuclear Power Plant created a "tax haven" wherein residents who resided in this school district paid lower taxes, it did not entitle the State of New York to strap these residents with the responsibility of the full tax burden.[15] In addition, the court found that the school district's refund obligation was triggered by the presence of a nuclear power plant, not by the nature or magnitude of the tax windfall the school district received.[16] Accordingly, the court declared that the Tax Act was unconstitutional under both the New York and Federal Constitution because the classification of taxpayers was not rationally related to the achievement of a legitimate state purpose.[17]

On appeal, defendants argued that the court erred in holding that tax payers not located in these "tax haven" school districts should pay school tax refunds to the nuclear power facilities which originally received assessment reductions.[18]

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the order. *Id.* at 364, 482 N.E.2d at 9, 492 N.Y.S.2d at 531. The mayor has no power to broaden the scope of the Equal Protection Clause beyond that provided by the Fourteenth Amendment. *Id.* at 360-61, 482 N.E.2d at 8, 492 N.Y.S.2d at 529.

12. *Prodell*, 166 Misc. 2d at 611, 630 N.Y.S.2d at 882.

13. *Id.*

14. *Prodell*, 645 N.Y.S.2d at 590.

15. *Prodell*, 166 Misc. 2d at 613, 630 N.Y.S.2d at 883.

16. *Id.*

17. *Id.* at 614, 630 N.Y.S.2d at 884.

18. *Id.* at 611, 630 N.Y.S.2d at 882. Furthermore, the sponsor of the bill noted that it "would be an unconscionable burden to place on the taxpayers of Brookhaven Township when the people of Shoreham-Wading River School District reaped the original eighteen million tax windfall." *Id.*

They insisted that Brookhaven residents who did not benefit from Shoreham's school taxes should not be made to share the cost of paying refunds with those who did.[19]

In evaluating the constitutional claims, the *Prodell* court began its analysis by citing the decision of the New York Court of Appeals in *Trump v. Chu*.[20] In *Trump*, the court declared that a challenged statute must be upheld if (1) its classification is rationally related to achieving a legitimate State purpose and (2) it was reasonable for the legislatures to believe that the challenged classification would have a fair and substantial relationship to that purpose.[21] Taxing statutes, however, enjoy a strong presumption of constitutionality.[22] Moreover, the burden is on the party challenging the constitutionality that the statute discriminates so invidiously as to "negate every conceivable basis which might support it."[23] Legislatures have broad leeway in "making classifications and drawing lines which in [its] judgment produce reasonable systems of taxation."[24] The test of

19. *Prodell*, 645 N.Y.S.2d at 592.

20. 65 N.Y.2d 20, 478 N.E.2d 971, 489 N.Y.S.2d 455 (1985). Plaintiffs charged that Tax Law article 31-B which imposed a 10% tax on gains derived from real property transfers over one million dollars violated the equal protection clause of both the New York and Federal Constitution. *Id.* at 22-23, 478 N.E.2d at 973, 489 N.Y.S.2d at 457. The court stated that as long as "legitimate State purposes justifying the classifications adopted, whether they are the purposes which actually motivated the Legislature or not, and inasmuch as the classifications are rationally related to their achievement, [and] the legislation has a rational basis," the taxing statute will be constitutional. *Id.* at 28, 478 N.E.2d at 977, 489 N.Y.S.2d at 461.

21. *Trump*, 65 N.Y.2d at 25, 478 N.E.2d at 974, 489 N.Y.S.2d at 458. "Taxing 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." *Id.*

22. *Id. See* Madden v. Kentucky, 309 U.S. 83, 88 (1940) (stating that "the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes."). *Id.*

23. *Madden*, 309 U.S. at 88.

24. *Trump*, 65 N.Y.2d at 25, 478 N.E.2d at 975, 489 N.Y.S.2d at 459 (quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359 (1973)).

the Equal Protection Clause is based upon whether the difference in treatment is an "invidious discrimination."[25] Thus, equal protection allows state legislatures to treat one class of individuals or entities differently from others as long as that classification is not "palpably arbitrary" nor amounts to an "invidious discrimination."[26]

In *Prodell*, the Appellate Division, Third Department, found that the purpose of the 1983 amendment to the Tax Act was to prevent school district taxpayers from reaping unwarranted windfalls.[27] Specifically, the State wanted to guarantee that payment of the tax refunds would be fairly distributed to all similarly situated taxpayers living in a community with a nuclear power plant in a uniform manner.[28] Moreover, the court found that assigning the burden of paying the school tax refund to taxpayers residing in school districts which benefited from the tax windfall created by the overassessment, was rationally related to a legitimate state interest.[29] Since that school district was Shoreham-Wading River, the burden of repayment fell squarely on the shoulders of this community.

The *Prodell* court rejected plaintiffs' contention that the Act arbitrarily discriminates invidiously.[30] Taxing statutes must be drafted in a manner that "applies to all persons similarly situated and any statute that was written to apply to one individual or group would offend the 'element of neutrality that must always characterize the performance of the sovereign's duty to govern impartially.'"[31] This Tax Act was specifically

25. *Lehnhausen*, 410 U.S. at 359.

26. *Trump*, 65 N.Y.2d at 25, 478 N.E.2d at 975, 489 N.Y.S.2d at 459 (quoting *Lehnhausen*, 410 U.S. at 360).

27. *Prodell*, 645 N.Y.S.2d at 591.

28. *Prodell*, 166 Misc. 2d at 612, 630 N.Y.S.2d at 883.

29. *Prodell*, 645 N.Y.S.2d at 591.

30. *Id.*

31. *Id.* at 613-14, 630 N.Y.S.2d at 884 (quoting Cleburne v. Cleburne Living Center, 473 U.S. 432, 452 (1985) (Stevens, J. dissenting)). In *Cleburne*, the Supreme Court declared that a Texas city's denial of a special use permit to operate a group home for the mentally retarded was unconstitutional. *Cleburne*, 473 U.S. at 435. The Court refused to classify

designed to protect Suffolk County taxpayers from paying tax refunds to school districts in which they do not reside.[32] If there were other districts in which a nuclear power plant was located, the 1983 amendment to the Tax Act would still have been applied; by its own terms, the statute neither singled out Shoreham-Wading River nor limited its scope only to this district.[33] In reaching this conclusion, the court maintained that, should a nuclear power facility ultimately become overassessed and entitled to a refund, it would be unconscionable to require other school districts to pay the refund, given that they did not share in the benefit of the original overassessment.[34]

The heart of equal protection maintains that a statute may not be written to apply to one individual or group but must apply to all persons similarly situated. Moreover, as the Supreme Court, Albany County noted, "[n]othing opens the door to arbitrary action so effectively as to allow . . . officials to pick and choose only a few to whom they will apply legislation . . . [c]ourts can take no better measure to assure that laws will be just than to require that laws be equal in operation."[35] In

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the mentally retarded as a "quasi-suspect class." *Id.* at 446. Instead, the Court conceded that "there have been and there will continue to be instances of discrimination against the retarded that are in fact invidious, and that are properly subject to judicial correction under constitutional norms." *Id.* Therefore, requiring a permit for the group home represents an irrational prejudice against the mentally retarded and violates the equal protection clause. *Id.* at 450.

32. *Prodell*, 166 Misc. 2d at 611, 630 N.Y.S.2d at 882. Furthermore, as set forth in the Assembly Memorandum in Support of Legislation, "the taxpayers of that [Shoreham-Wading River] school district have reaped windfall taxes and should therefore pay any refunds." *Id.* (*citing* Bill Jacket, L1983, ch. 1018).

33. *Prodell*, 645 N.Y.S.2d at 591.

34. *Id.*

35. *Prodell*, 166 Misc. 2d at 614, 630 N.Y.S.2d at 884 (*quoting* Railway Express v. New York, 336 U.S. 106, 112-13 (1949) (Jackson, J., concurring)). In *Railway*, a New York City traffic regulation banning advertisements on vehicles except on those which advertise their own products was challenged on equal protections grounds. *Railway*, 336 U.S. at 110. Appellants, who sold the exterior sides of their trucks to advertisers, challenged the constitutionality of the regulation on the theory that a truck

conclusion, the court found that the plaintiffs did not meet the burden of showing that the Act arbitrarily discriminated against the Shoreham-Wading River taxpayers.[36] Moreover, since the Federal and State Equal Protection Clauses are co-extensive in scope, the *Prodell* court determined that the 1983 amendment to the Tax Act did not violate the Equal Protection Clause of either the New York or Federal Constitution.[37]

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carrying an owner's advertisements is neither less distracting nor causes fewer safety concerns than a vehicle carrying advertising for others. *Id.* at 109-10. However, the Court held that the regulation did not violate the equal protection by stating that "[i]t is no requirement of equal protection that all evils of the same genus be eradicated or none at all." *Id.* at 110.

36. *Prodell*, 645 N.Y.S.2d at 591.

37. *Prodell*, 645 N.Y.S.2d at 592.