FREE SYNAGOGUE FLUSHING ET AL. v. BOARD ESTIMATE CITY NEW YORK ET AL.

313 N.Y.S.2d 557 (1970) | Cited 3 times | New York Supreme Court | July 27, 1970

The predicates for appellants' attack on the resolution are that (a) Planning Commission Chairman Elliott cast the deciding vote without having been present at the public hearings conducted by the commission pursuant to section 200 of the Charter of the City of New York, (b) the Board of Estimate, in approving the resolution, held a public hearing without notice, as a result of which the hearing was poorly attended and all the interested parties were not afforded an opportunity to present their arguments, and (c) the Board of Estimate's action constituted a pro-forma approval reflecting the absence of independent judgment. In our opinion, the public hearing in the situation at bar was conducted by the commission in a quasi-legislative and advisory capacity, the commission being "created for the purpose of holding public hearings on zoning changes, asking advice and suggestions from the various parties, and of relieving the Board [of Estimate] of certain onerous duties" (McCabe v. City of New York, 281 N. Y. 349, 355). Unlike a body conducting a judicial or quasi-judicial hearing or inquiry, the members of the commission are not limited to or bound by whatever is adduced at such public hearings and may avail themselves of any additional data dehors the record which would enable them to make an informed decision free of the taint of arbitrariness. In this perspective, the evaluation of the qualitative nature and adequacy of the factual bases for such informed decision and of the significance of a particular phase of the traffic-safety issue vis-a-vis other criteria bearing on the over-all advisability of the zoning change in the public interest is primarily within the province of the administrative or legislative body to make, free of judicial interference. It is our view that the predicates for such an evaluation and the means of making an overall informed decision existed at bar. We also agree with Special Term's conclusion, predicated on the facts and circumstances adduced, that Chairman Elliott had and utilized these means and that his vote met the prerequisites of validity irrespective of his absence from the hearings and of the unavailability of the transcripts of the public hearings (Matter of Taub v. Pirnie, 3 N.Y.2d 188, 194). In view thereof, to suggest, as appellants do, that a plenary trial be had to consider, inter alia, Chairman Elliott's knowledgeability with respect to a specific phase of the traffic safety issue is to suggest selecting the criteria which he need consider and probing his mental processes in reaching his conclusion and to open the door to a similar selection and probe with respect to every member of a body acting in a legislative or quasi-legislative capacity, a procedure which, in our opinion, is not within the scope of the judicial process (Matter of Taub v. Pirnie, supra). Insofar as the action of the Board of Estimate is concerned, while it is not unreasonable to expect that it give notice of any public hearing it may choose to hold, we note that (a) section 200 of the City Charter does not require the board to hold any public hearing; (b) absent a statutory mandate to that effect there is no constitutional requirement that there be a public hearing in connection with the enactment of legislation (Bowles v. Willingham, 321 U.S. 503, 519-520; Bi-Metallic Co. v. Colorado, 239 U.S. 441, 445); and (c) absent the filing of a protest as provided in subdivision 3 of section 200 of the City

Charter the resolution could have been effected by mere silence or inaction on the part of the board (McCabe v. City of New York, 281 N. Y. 349, 353, supra ; New York City Charter, § 200, subd. 2). Accordingly, at this statutory posture, any public hearing that the board chose to hold and the manner in which such hearing was held were within the board's sole discretion and prerogative. In arriving at this conclusion, we do not reach the question of the adequacy of the hearing, the record thereof not being before us, and appellants not having presented to this court anything persuasive that there was no factual basis for Special Term's conclusion that the board's approval was carefully considered. Nor have they adduced anything of substance which would justify a conclusion (1) that the legislative action taken was arbitrary, (2) that no state of facts can be reasonably conceived to sustain it, (3) that it was not justified under the police power of the State by any reasonable interpretation of the facts, or (4) that it was not such action as could be reasonably calculated to promote the general welfare (Borden's Co. v. Baldwin, 293 U.S. 194; Shepard v. Village of Skaneateles, 300 N. Y. 115; Rodgers v. Village of Tarrytown, 302 N. Y. 115; Thomas v. Town of Bedford, 11 N.Y.2d 428).

Disposition

Order affirmed insofar as appealed from, with $30 costs and disbursements jointly to defendants appearing separately and filing separate briefs.