WITHLACOOCHEE RIVER ELECTRIC CO-OPERATIVE INC. v. TAMPA ELECTRIC COMPANY

158 So. 2d 136 (1963) | Cited 0 times | Supreme Court of Florida | November 1, 1963

Per Curiam.

Pursuant to the prayer of a petition for certiorari because of an alleged conflict between the instant decision of the District Court of Appeal, Second District, and the decision of this Court in St. Joseph Telephone and Telegraph Co. v. Southeastern Telephone Co., 149 Fla. 14, 5 So.2d 55, we issued the writ. Inasmuch as a jurisdictional conflict of decisions appeared questionable, we set the matter for hearing upon both jurisdiction and merits. Having heard oral arguments and upon further careful study of the record and briefs, we are now convinced that the District Court followed the prior decision of this Court and did not render a decision in conflict therewith.

As a matter of fact, the District Court's decision is consonant with our prior decision in the instant suit.[1] In that decision we merely held that the complaint stated a cause of action and if the allegations of said complaint were proven Tampa Electric would be entitled to the relief which it sought. Upon remand testimony was taken and a final decree favorable to Tampa Electric was entered. In the final decree the Chancellor made the following finding: "* * * the plaintiff has sustained the allegations of its complaint by competent proof and is entitled to the relief prayed for, * * *." This decree was affirmed by the District Court of Appeal, Second District.

We have decided time and time again that this Court will not re-weigh or re-evaluate the testimony in order to determine its jurisdiction when it is sought to be invoked upon the theory of conflict in decisions. We see no reason to recede from this firmly established rule in this case. Moreover, we considered and discussed the case of St. Joseph Telephone and Telegraph Co. v. Southeastern Telephone Co., supra, in our opinion on the first appearance of this cause,[2] and disposed of all pertinent questions now attempted to be raised again, in and by the present petition for a writ of certiorari.

It appears that some confusion has arisen with reference to Footnote #6, page 473 of our opinion, published in 122 So.2d beginning at page 471. It should be perfectly clear even to a novitiate that the remarks contained in said footnote were unnecessary to the decision which we reached, were not pronouncements of law but merely philosophical observations, and constitute nothing more nor less than obiter dicta. They should be so treated by the bench and bar.

The petition for writ of certiorari filed herein should be and it is hereby denied.

ROBERTS, Acting C.J., THORNAL and CALDWELL, JJ., and WALKER, Circuit Judge, concur.

HOBSON (Ret.), J., concurs specially.

HOBSON (Ret.), Justice (concurring specially).

I fully concur in the foregoing order denying the petition for writ of certiorari filed herein.

Nevertheless because I was the author of this Court's opinion appearing in 122 So.2d 471, I am impelled to make some remarks concerning Footnote #6 on page 473 of the published opinion. In the first place it is not the custom of this Court to place in any footnote pronouncements of law necessary to the decision reached. As has been said, these statements were simply "philosophical observations" and are nothing more nor less than obiter dicta. Personally I am still of the view that the first of these statements is correct. It appears that the present administrator of the Rural Electrification Administration has construed the provision of the Rural Electrification Act "The administrator is authorized and empowered to make loans * * * for the furnishing of electric energy to persons in rural areas who are not receiving central station service" in the following manner:

"It is presently the position of the Rural Electrification Administration as it has always been since the enactment of the Rural Electrification Act that a loan may be made for facilities to serve a person to whom central station service is otherwise available if he is not in fact being served. The statutory test as the act clearly states is the absence and not the unavailability of service."

I was surprised, not to say shocked and amazed, when counsel for the petitioner furnished us with the foregoing information. However, my first statement in Footnote #6 appears to be supported by an editorial appearing in the Tallahassee Democrat under date of October 2, 1963. The editor who prepared the editorial to which I refer is one of the most able, experienced and well-informed editorial writers of the present era and his philosophy with reference to my second statement in Footnote #6 appears to square with my own. In fact his reasoning is sound and logical if not irrefragable.

I quote the aforementioned editorial in full:

"REA SHOULD STICK TO ITS ROLE

"The Rural Electrification Administration was set up in the 1930s to bring electricity to farm families who couldn't be reached by private power lines. This it has done. Today, 98 per cent of the farms in the nation have electricity.

"Looking for new fields to conquer, the cooperatives sponsored by REA are branching beyond the farms. With the government financing them with 2 per cent interest loans and no income tax on earnings they can outbid private utilities. That means the taxpayer pays the subsidy and the government loses the utility's taxes. Obviously, this is unfair competition.

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"REA should be confined to its own field, if it still has fields to develop. It should not be allowed to expand, bureaucratically, for the mere sake of expanding. It might be time to decide that where it has served its purpose of electrifying areas that could not be reached by private power, it either should be made to stand on its own feet with no special government subsidies, or be sold to taxpaying private power companies with sale proceeds going to retire some of the national debt it helped create."

1. Tampa Electric Co. v. Withlacoochee River Electric Cooperative, Inc., 122 So.2d 471.

2. Tampa Electric Co. v. Withlacoochee River Electric Cooperative, Inc., 122 So.2d 471.