LEXSEE 426 U.S. 572

EXAMINING BOARD OF ENGINEERS, ARCHITECTS AND SURVEYORS ET AL. v. FLORES DE OTERO

No. 74-1267

SUPREME COURT OF THE UNITED STATES

426 U.S. 572; 96 S. Ct. 2264; 49 L. Ed. 2d 65; 1976 U.S. LEXIS 65

Argued December 8, 1975
June 17, 1976 *

* Together with Examining Board of Engineers, Architects and Surveyors et al. v. Perez Nogueiro, also on appeal from the same court (see this Court's Rule 15(3)).

PRIOR HISTORY: APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF P

SUMMARY:

Two alien residents of Puerto Rico brought separate actions, in the United States District Court for the District of Puerto Rico, based upon the Civil Rights Act of 1871 (*42 USCS 1983*) and challenging the constitutionality of a Puerto Rico statute which permitted only United States citizens to engage in the private practice of engineering. The three-judge District Court rendered judgment in favor of one of the plaintiffs and subsequently also in favor of the second plaintiff.

On direct appeals, the United States Supreme Court affirmed. In an opinion by Blackmun, J., expressing the views of seven members of the court it was held that (1) the District Court had jurisdiction under *28 USCS 1343(3)* to entertain a suit based upon *42 USCS 1983*, since Puerto Rico is a "State" for the purposes of such statute insofar as it confers jurisdiction upon federal District Courts to redress the deprivation, "under color of any State law," of rights secured by the Federal Constitution or federal civil rights statutes; (2) the District Court properly refused to abstain from reaching the merits of the plaintiffs' constitutional claim; and (3) the Puerto Rico statute deprived the plaintiffs of "rights, privileges, or immunities secured by the Constitution and laws" within the meaning of *42 USCS 1983*, since the statute violated either the *equal protection clause of the Fourteenth Amendment* or the *due process clause of the Fifth Amendment*.

Rehnquist, J., agreed with the holdings of the court under (1) and (2), supra, but dissented from the holding under (3), since in his view the Puerto Rico statute violated neither of the constitutional provisions referred to by the court in that holding.

Stevens, J., did not participate.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]

COURTS §270

federal -- jurisdiction -- civil rights suit in Puerto Rico --

Headnote:[1A][1B]

The United States District Court for the District of Puerto Rico has jurisdiction under *28 USCS 1343(3)*--conferring jurisdiction upon District Courts to redress the deprivation, "under color of any State law," of rights secured by the Federal Constitution or by any federal statute providing for equal rights of citizens or of all persons within the jurisdiction of the United States--to entertain a suit based upon the Civil Rights Act of 1871 (*42 USCS 1983*), providing a private right of action for violation of federal rights; Puerto Rico is a "State" for

jurisdiction under *28 U.S.C.§ 1254(2)*, *Fornaris v. Ridge Tool Co., 400 U.S. 41, 42 n. 1 (1970)*, but (b) that the statutes of Puerto Rico are "State" statutes for the purpose of the three-judge court provision of *28 U.S.C. § 2281*, *Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 669-676 (1974)*. The first decision was based upon the Court's practice to construe narrowly statutes authorizing appeals, and Congress' failure to provide a statute, parallel to *28 U.S.C. § 1258*, authorizing appeals from the Supreme Court of Puerto Rico under the same circumstances as appeals from the highest courts of the States. The second decision recognized the greater autonomy afforded Puerto Rico with its assumption of commonwealth status in the early 1950's. Inclusion of the statutes of Puerto Rico within *28 U.S.C. § 2281* served the purpose "of insulating a sovereign State's laws from interference by a single judge." *416 U.S., at 671*. See also *Andres v. United States, 333 U.S. 740, 745 (1948)*; *Puerto Rico v. Shell Co. (P.R.), Ltd., 302 U.S. 253, 257-259 (1937)*; and *Domenech v. National City Bank, 294 U.S. 199, 204-205 (1935)*.

A. The federal civil rights legislation, with which we are here concerned, was enacted nearly 30 years before the conflict with Spain and the resulting establishment of the ties between Puerto Rico and the United States. Both § 1343(3) and *§ 1983* have their origin in the Ku Klux Klan Act of April 20, 1871, § 1, 17 Stat. 13. That statute contained not only the substantive provision protecting against "the deprivation of any rights, privileges, or immunities secured by the Constitution" by any person acting under color of state law, but, as well, the jurisdictional provision authorizing a proceeding for the enforcement of those rights "to be prosecuted in the [*582] several district or circuit courts of the [***74] United States." [11] Jurisdiction was not independently [**2272] defined; it was given simply to enforce the substantive rights created by the statute. The two aspects, seemingly, were deemed to coincide.

11 The first section of the 1871 Act provided:

"That any person who, under color of any law, statute, ordinance, regulation, custom, or usage of any State, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom, or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several district or circuit courts of the United States, with and subject to the same rights of appeal, review upon error, and other remedies provided in like cases in such courts, under the provisions of the act of the ninth of April, eighteen hundred and sixty-six, entitled 'An act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication'; and the other remedial laws of the United States which are in their nature applicable in such cases."

It has been said that the purpose of the legislation was to enforce the provisions of the Fourteenth, not the *Thirteenth, Amendment. District of Columbia v. Carter, 409 U.S., at 423*; *Lynch v. Household Finance Corp., 405 U.S. 538, 545 (1972)*; *Monroe v. Pape, 365 U.S. 167, 171 (1961)*. As originally enacted, § 1 of the 1871 Act applied only to action under color of law of any "State." In 1874, however, Congress, presumably pursuant to its power to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States," granted by the *Constitution's Art. IV, § 3, cl. 2*, added, without explanation, the words "or Territory" in the 1874 codification of United States statutes. Rev. Stat. § 1979 (1874). See *District of Columbia v. Carter, 409 U.S., at 424 n. 11*. The evident aim [*583] was to insure that all persons residing in the Territories not be denied, by persons acting under color of territorial law, rights guaranteed them by the Constitution and laws of the United States. [12]

12 Another change effected with the codification, and without explanation, was the addition in § 1979 of the words "and laws" following the words "the Constitution."

These changes were retained in § 1979 as it appeared in Rev. Stat. (1878).

Although one might say that the purpose of Congress was evident, the method chosen to implement this aim was curious and, indeed, somewhat confusing. In the 1874 codification, only the substantive portion (the

predecessor of today's *§ 1983*) of § 1 of the 1871 Act was redesignated as § 1979. [13] It became separated from the jurisdictional portion (the predecessor of today's § 1343 (3)) which appeared as § 563 Twelfth and § 629 Sixteenth (concerning, respectively, the district courts and the circuit courts) of the Revised Statutes. But the words "or Territory" appeared only in § 1979; they did not appear in §§ 563 and 629.

13 Section 1979 provided:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Our [***75] question, then, is whether, in separately codifying the provisions and in having this discrepancy between them, Congress intended to restrict federal-court jurisdiction in some way. We conclude that it intended no such restriction. First, as stated above, the common origin of *§§ 1983* and 1343(3) in § 1 of the 1871 Act suggests that the two provisions were meant to be, and are, complementary. *Lynch v. Household Finance* [*584] *Corp., 405 U.S., at 543 n. 7.* There is no indication that Congress intended to prevent federal district and circuit courts from exercising subject-matter jurisdiction of claims of deprivation of rights under color of territorial law if they otherwise had personal jurisdiction of the parties. Second, a contrary interpretation necessarily would lead to the conclusion that persons residing in a Territory were not effectively afforded a federal-court remedy there for a violation of the 1871 Act despite Congress' obvious intention to afford one. The then existing territorial district courts established by Congress were granted "the same jurisdiction, [**2273] in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States." Rev. Stat. § 1910 (1874) (emphasis added). [14] Thus, if the federal district and circuit courts had jurisdiction to redress deprivations only under color of state (but not territorial) law, the territorial courts were likewise so limited. Further, the United States District Courts for the Districts of California and Oregon, and the territorial District Court for Washington possessed jurisdiction over violations of laws extended to the Territory of Alaska. Rev. Stat. § 1957 (1874). Unless the federal courts had jurisdiction to redress deprivations of rights by persons acting under color of territorial law, [*585] Congress' explicit extension of the 1871 Act to provide a remedy against persons acting under color of territorial law was only theoretical because no forum existed in which these rights might be enforced.

14 The then territorial courts were those in the Territories of New Mexico, Utah, Colorado, Dakota, Arizona, Idaho, Montana, and Wyoming. The Territory of Washington was governed by Rev. Stat. § 1911 (1874), which provided, in part, that its territorial district courts shall have "the same jurisdiction in all cases arising under the Constitution of the United States, and the laws of the Territory, as is vested in the circuit and district courts of the United States." It will be noted that the quoted language does not include the words "and laws" after "Constitution." Section 1910, in contrast, did. The omission was soon rectified, however. Rev. Stat. § 1911 (1878).

[***LEdHR2A] [2A]This conclusion that Congress granted territorial courts jurisdiction to enforce the provisions of § 1979 is strengthened by two additional factors. First, Congress explicitly provided: "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States." Rev. Stat.§ 1891 (1874). Section 1979, with its reference to Territories was obviously an applicable statute. Second, it was not until the following year that Congress conferred on United States district courts general federal-question [***76] jurisdiction.[15] Act of Mar. 3, 1875, § 1, 18 Stat. 470, now codified as *28 U.S.C. § 1331(a)*. See generally *Zwickler v. Koota, 389 U.S. 241, 245-247* [*586] *(1967)*. Accordingly, unless in 1874 the federal district and circuit courts had jurisdiction to redress deprivations under color of territorial law, Congress, although providing rights and remedies, could be said to have failed to provide a means for their enforcement.

15 Original "arising under" jurisdiction was vested in the federal courts by the Act of Feb. 13,

1801, § 11, 2 Stat. 92, but was repealed a year later by the Act of Mar. 8, 1802, § 1, 2 Stat. 132. There was nothing further along this line until the Act of Mar. 3, 1875. See *District of Columbia v. Carter, 409 U.S. 418, 427 n. 20 (1973).*

Revised Stat. § 5600 (1874) provided:

"The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title, under which any particular section is placed."

This provision lends some support to our conclusion that the failure to add the words "or Territory" to the jurisdictional successor of § 1 of the 1871 Act was mere legislative oversight. Had § 1 remained intact, the words "or Territory" would have been added to the substantive part of § 1 while the jurisdictional part would have continued to read "such proceeding to be prosecuted in the several district or circuit courts of the United States." 17 Stat. 13.

For all these reasons, we conclude that the federal territorial as well as the federal district and circuit courts generally had jurisdiction to redress deprivations of constitutional rights by persons acting under color of territorial law. We turn, then, to the legislation specifically applicable to Puerto Rico.

B. A similar approach was taken by Congress in its establishment of the civil government in Puerto Rico in the exercise of its territorial power under *Const., Art. IV, § 3, cl. 2.* [16] By the Treaty of Paris, 30 [**2274] Stat. 1754 (1899), Spain ceded Puerto Rico to the United States. 30 Stat. 1755. Shortly thereafter, the Foraker Act, being the Act of April 12, 1900, 31 Stat. 77, became law. This legislation established a civil government for Puerto [*587] Rico, including provisions for courts. The judicial structure so created consisted of a local court system with a Supreme Court, and, as well, of a Federal District Court. [17] The [***77] Act, § 34, 31 Stat. 84, provided: "The [federal] district court... shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States." [18]

[***LEdHR2B] [2B]

16 The powers vested in Congress by *Const., Art. IV, § 3, cl. 2*, to govern Territories are broad. *District of Columbia v. Carter, 409 U.S., at 430-431*; *National Bank v. County of Yankton, 101 U.S. 129, 133 (1880)*; American Insurance Co. v. Canter, 1 Pet. 511, 542 (1828). And in the case of Puerto Rico, the Treaty of Paris, 30 Stat. 1754 (1899), specifically provided: "The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress." Id., at 1759. Congress exercised its powers fully. Thus, by the Foraker Act, 31 Stat. 77, the President was authorized to appoint, with the advice and consent of the Senate, the Governor of Puerto Rico, and its chief executive officers, *Id., at 81*; the justices of the Supreme Court of Puerto Rico, and the judge of the United States District Court there. *Id., at 84.* In addition, Congress required that "all laws enacted by the [Puerto Rico] legislative assembly shall be reported to the Congress of the United States, which hereby reserves the power and authority, if deemed advisable, to annul the same." *Id., at 83.*

17 This establishment of two separate systems of courts stands in contrast to other territorial legislation where only one system of courts, including district courts and a supreme court, was established and given the jurisdiction vested in United States courts. See Rev. Stat. §§ 1864-1869, 1910 (1874). See also *Palmore v. United States, 411 U.S. 389, 402-403 (1973).*

18 Section 34 provided in relevant part:

"That Porto Rico shall constitute a judicial district to be called 'the district of Porto Rico.' The President, by and with the advice and consent of the Senate, shall appoint a district judge... for a term of four years, unless sooner removed by the President. The district court for said district shall be called the district court of the United States for Porto Rico... and shall have, in addition to the ordinary jurisdiction of district courts of the United States, jurisdiction of all cases cognizant in the circuit courts of the United States, and shall proceed therein in the same manner as a circuit court." 31 Stat. 84.

On its face, this appears to have been a broad grant of jurisdiction similar to that conferred on the United States district courts and comparable to that conferred on the earlier territorial courts. The earlier territorial grants, however, were different. Whereas the Federal District Court for Puerto Rico was to have "the ordinary jurisdiction of district courts of the United States," the earlier territorial courts had been given explicitly, by Rev. Stat. § 1910 noted above, "the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States." One might expect that [*588] the grant of jurisdiction in the former necessarily encompassed or was the same as the grant of jurisdiction in the latter. Congress, however, was divided over the question whether the Constitution extended to Puerto Rico by its own force or whether Congress possessed the power to withhold from Puerto Ricans the constitutional guarantees available to all persons within the several States and the earlier Territories. See S. Rep. No. 249, 56th Cong., 1st Sess. (1900); H.R. Rep. No. 249, 56th Cong., 1st Sess. (1900). [19]

19 The report of the majority of the House Committee considering the legislation for Puerto Rico concluded:

"First. That upon reason and authority the term 'United States,' as used in the Constitution, has reference only to the States that constitute the Federal Union and does not include Territories.

"Second. That the power of Congress with respect to legislation for the Territories is plenary." H.R. Rep. No. 249, 56th Cong., 1st Sess., 16 (1900).

But see the minority report, id., at 17-20. This adopts by reference the views of Representative Newlands: "The weight of authorities [s] ustains the proposition that the Constitution, ex proprio vigore, controls the action of the Government created by the Constitution wherever it operates, whether in States or Territories." Id., at 29.

The [**2275] division within Congress was reflected in the legislation governing Puerto Rico. Thus, despite some support for the measure, see S. Rep. No. 249, pp. 12-13, Congress declined to grant citizenship to the inhabitants of Puerto Rico. 33 Cong. Rec. 3690 (1900). And, in contrast to some earlier territorial legislation, Congress did not expressly extend to Puerto Rico the Constitution of the United States or impose on the statutes of Puerto Rico then in effect the condition that they be continued only if consistent with the United States Constitution. [20]

20 The Senate Committee considering the proposed legislation for a civil government in Puerto Rico surveyed the previous territorial legislation to determine when, and under what circumstances, the Congress had extended the Constitution to the Territories. It concluded that, as a rule, the organization of a Territory had not been accompanied by an extension of the Constitution. Not until 1850, when Congress established a government for the Territory of New Mexico, did it explicitly provide: "That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of New Mexico as elsewhere within the United States." Act of Sept. 9, 1850, c. 49, § 17, 9 Stat. 452. See S. Rep. No. 249, 56th Cong., 1st Sess., 6 (1900). This provision became the model for subsequent territorial legislation.

[*589] At [***78] the same time, however, Congress undoubtedly was aware of the above-mentioned Rev. Stat. § 1891 providing: "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect... in every Territory hereafter organized as elsewhere within the United States." Yet no mention of this statute was made in the Foraker Act. In contrast, two years later, Congress made § 1891 expressly inapplicable when it created a civil government for the Territory of the Philippines. Act of July 1, 1902, c. 1369, § 1, 32 Stat. 692. [21] Moreover, Congress, by § 14 of the Foraker Act, extended to Puerto Rico "the statutory laws [other than the internal revenue [*590] laws] of the United States not locally inapplicable," 31 Stat. 80, [22] and Rev. Stat. § 1979, providing remedies for deprivation of rights guaranteed by the Constitution and laws of the United States by persons acting under color of territorial law was at least potentially "applicable."

21 "The provisions of section eighteen hundred and ninety-one of the Revised Statutes of eighteen hundred and seventy-eight shall not apply to the

Philippine Islands." 32 Stat. 692. Nevertheless, the people of the Philippines were not left unprotected because Congress also provided them with a *bill of rights* guaranteeing most of the basic protections afforded by the Constitution to persons within the United States. § 5, 32 Stat. 692. See *Kepner v. United States, 195 U.S. 100 (1904)*.

In *Downes v. Bidwell, 182 U.S. 244 (1901)*, which presented this Court with its first opportunity to review the constitutionality of the Foraker Act, Mr. Justice Brown referred to Rev. Stat. § 1891 in his opinion but attached no significance to it. *182 U.S., at 257*. In contrast, the Court in *Dorr v. United States, 195 U.S. 138, 143 (1904)*, relied on the 1902 Act's express exclusion of § 1891, in holding that the Constitution, except insofar as required by its own terms, did not extend to the Philippines.

22 This provision was continued as § 9 of the Organic Act of 1917, 39 Stat. 954: "That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws." This is now part of the Puerto Rican Federal Relations Act, *48 U.S.C. § 734*. Although appellants contend that, for a variety of reasons, the federal statutes with which we are concerned should not apply to Puerto Rico, they do not argue that these statutes are "locally inapplicable," within the meaning of the Puerto Rican Federal Relations Act.

This review of the Foraker Act and its legislative history leads to several conclusions: Congress was uncertain of its own powers respecting Puerto Rico and of the extent to which the Constitution applied there. At the same time, it recognized, at least implicitly, that the ultimate resolution of these questions was the responsibility of this Court. S. Rep. No. 249, pp. 9-12; H.R. Rep. No. 249, pp. 9-15, 25-28. Thus Congress appears to have left the question of the personal rights to be accorded to the [**2276] inhabitants of Puerto Rico to orderly development by this Court and to whatever further provision Congress itself might make for them. The grant of jurisdiction to the District Court in Puerto Rico, nevertheless, appeared to be sufficiently broad to permit [***79] redress of deprivations of those rights by persons acting under color of territorial law. See *Insular Police Comm'n v. Lopez, 160 F. 2d 673, 676-677* (CA1), cert. denied, *331 U.S. 855 (1947)*. Nothing in the language of § 34 of the Foraker Act precluded the grant of jurisdiction [*591] accorded the earlier territorial courts by Rev. Stat. § 1910, and its language, containing no limitations, cautions us against reading into it an exception not supported by persuasive evidence in the legislative history.

Subsequent legislation respecting Puerto Rico tends to support the conclusion that uncertainty over the application of the Constitution did not lead Congress to deprive the inhabitants of Puerto Rico of a federal forum for vindication of whatever rights did exist. In the Organic Act of 1917, sometimes known as the Jones Act, 39 Stat. 951, Congress made more explicit the jurisdiction of the Federal District Court by according it "jurisdiction of all cases cognizable in the district courts of the United States," *§ 41*, 39 Stat. 965; generally granted Puerto Rico citizens United States citizenship, § 5, 39 Stat. 953; and codified for Puerto Rico a *bill of rights*, § 2, 39 Stat. 951. This *bill of rights*, which remained in effect until 1952, provided Puerto Ricans with nearly all the personal guarantees found in the United States Constitution. [23] The very first provision, for example, read: "That no law shall be enacted in Porto Rico which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." These words are almost identical with the language of the *Fourteenth Amendment*; and when Congress selected them, it must have done so with the *Fourteenth Amendment* [*592] in mind and with a view to further development by this Court of the doctrines embodied in it. See *Kepner v. United States, 195 U.S. 100, 124 (1904)*. In its passage of the Jones Act, Congress clearly set the stage for the federal court in Puerto Rico to enforce the provisions of *§ 1983*'s predecessor (Rev. Stat. § 1979) which prohibited the deprivation "under color of any statute, ordinance, regulation, custom, or usage, of any... Territory... of any rights, privileges, or immunities secured by the Constitution and laws." See *Munoz v. Porto Rico Ry. Light & Power Co., 83 F. 2d 262, 264-266* (CA1), cert. denied, *298 U.S. 689 (1936)*.

23 Section 2 of the Jones Act, 39 Stat. 951, left only two major exceptions: the right, under the *Fifth Amendment*, not to "be held to answer for a capital, or otherwise infamous crime, unless on a