Walter A. Saxton et al., Appellants, v. Hugh L. Carey, Governor of the State of New York, et al., Respondents

[NO NUMBER IN ORIGINAL]

Court of Appeals of New York

44 N.Y.2d 545; 378 N.E.2d 95; 406 N.Y.S.2d 732; 1978 N.Y. LEXIS 2022

May 4, 1978, Argued
June 8, 1978, Decided

PRIOR HISTORY: Appeal from an order of the Appellate Division of the Supreme Court in the Third Judicial Department, entered March 29, 1978, which modified, on the law, and, as so modified, affirmed an order of the Supreme Court at Special Term (John T. Casey, J.), entered in Albany County, dismissing the complaint for declaratory and injunctive relief and denying a motion by plaintiffs for a preliminary injunction. The modification consisted of reinstating the complaint and directing that the judgment be entered declaring that the 1978-1979 State budget and accompanying appropriation bills are constitutional.

Plaintiffs had alleged that the 1978-1979 State budget and accompanying appropriation bills as submitted by the Governor to the Legislature were unconstitutional for lack of itemization. Special Term held that since the budget had not been enacted by the Legislature, a judicial determination of its constitutionality would be advisory only and, therefore, dismissed the complaint as premature. The Appellate Division modified and declared the budget and accompanying bills to be constitutional, holding that the complaint was not premature.

The Court of Appeals affirmed and, in an opinion by Judge Gabrielli, held that, while the New York Constitution requires that the State budget be itemized, it is not the proper function of the courts to police the degree of itemization and that, if the Legislature determines that the demands of government require transfer of funds within a particular program or department, the Constitution is satisfied and the courts will not disturb that result.

Saxton v Carey, 61 AD2d 645.

DISPOSITION: Order affirmed.

HEADNOTES

State -- State Budget -- Itemization

1. While the New York Constitution requires that the State budget be itemized, it is not the proper function of the courts to police the degree of itemization necessary in the budget, for the courts are neither constituted, suited nor designed to assume such a role. The creation and enactment of the State budget is a matter delegated essentially to the Governor and the Legislature and should the Legislature determine that a particular budget is so lacking in specificity as to preclude meaningful review, it is the duty of that Legislature to refuse to approve the budget. However, if the Legislature is satisfied with the budget as submitted, it is not for the courts to intervene and declare it invalid because of a failure to measure up to some mythical budget specifically delineating the exact fate of every penny of public funds.

State -- State Budget -- Transfer of Funds within

Particular Programs

2. If the Legislature determines that the demands of government require flexibility in the use of appropriated funds by permitting the transfer of funds within a particular program or department, the New York Constitution is satisfied and the courts will not disturb that result. There is no constitutional invalidity involved in such transfer so long as ultimately the executive proposed the appropriations and there is agreement as to the limitations and conditions they contain.

COUNSEL: *Ira M. Ball*, for appellant *pro se* and for Walter A. Saxton and another, appellants. I. Governor Carey has failed to carry out his constitutional duty to submit an itemized budget and appropriation bills to the Legislature. *(People v Tremaine*, 226 App Div 331, 252 NY 27; *New York Public Interest Research Group v Carey*, 55 AD2d 274; *Ball v State of New York*, 83 Misc 2d 903, 52 AD2d 47; 41 NY2d 617; *Hidley v Rockefeller*, 28 NY2d 439.) II. Respondents' effort to reverse *Tremaine* (1939). *(Matter of Picone v Commissioner of Licenses of City of N. Y.*, 241 NY 157; *Matter of Smith v Morgan*, 253 App Div 239; *Ball v State of New York*, 41 NY2d 617; *New York Public Interest Research Group v Carey*, 86 Misc 2d 329, 55 AD2d 274, 41 NY2d 1072; *Judd v Board of Educ.*, 278 NY 200; *Hidley v Rockefeller*, 28 NY2d 439.) III. Respondents Carey and Miller have intentionally disregarded article VII of the Constitution. IV. The executive-legislative "trade-off". *(Boryszewski v Brydges*, 37 NY2d 361; *Matter of Lynch v O'Leary*, 166 Misc 567; *St. Clair v Yonkers Raceway*, 13 NY2d 72.) V. The fallacy of "program budgeting". *(People v Tremaine*, 281 NY 1.) VI. Judge Breitel's dissenting opinion in *Hidley*. *(St. Clair v Yonkers Raceway*, 13 NY2d 72; *Matter of Carey v Morton*, 297 NY 361; *United States v American Trucking Assns.*, 310 U.S. 534; *People v Cox Constr. Co.*, 172 Misc 244, 259 App Div 707; *Ferraiolo v O'Dwyer*, 302 NY 371; *Household Fin. Corp. v Goldring*, 263 App Div 524, 289 NY 574; *Judd v Board of Educ.*, 278 NY 200.) VII. The provision in the executive budget permitting the free interchange and transfer of funds is unconstitutional on its face. VIII. The interest of the citizen-taxpayer must be the courts primary concern.

Louis J. Lefkowitz, Attorney-General (Jean M. Coon and *Ruth Kessler Toch* of counsel), for respondents. I. Article VII of the New York Constitution does not require that either the executive budget or the appropriation bills submitted by the Governor be line-item in form. *(City of Albany v McMorran*, 16 AD2d 1021; *Cuglar v Power Auth. of State of N. Y.*, 4 Misc 2d 879, 4 AD2d 801, 3 NY2d 1006; *Kaskel v Impellitteri*, 306 NY 73, 609, 347 U.S. 934; *Berman v Parker*, 348 U.S. 26; *People v Tremaine*, 281 NY 1; *Graves v New York ex rel. O'Keefe*, 306 U.S. 466; *New York Public Interest Research Group v Carey*, 55 AD2d 274, 41 NY2d 1072; *People v Tremaine*, 252 NY 27; *Hidley v Rockefeller*, 36 AD2d 387, 28 NY2d 439.) II. The provisions contained in the budget bills authorizing the Director of the Budget to transfer funds within scheduled appropriations are valid budgetary provisions. *(Matter of Posner v Rockefeller*, 33 AD2d 314, 26 NY2d 970.)

JUDGES: Gabrielli, J. Chief Judge Breitel and Judges Jasen, Jones, Wachtler, Fuchsberg and Cooke concur.

OPINION BY: GABRIELLI

OPINION

[*547] [**96] [***733] **OPINION OF THE COURT**

This court is presented with a frontal attack on the entire 1978-1979 State budget. It is urged that this budget for the operation of the State of New York is invalid and that both the executive and legislative action on the budget for the operation of the State as well as for aid and assistance to local governments, are violative of the State Constitution. These three plaintiffs have brought this action for declaratory relief seeking a judgment declaring the budget to be constitutionally infirm and, further, they seek to enjoin the Governor, legislative leaders, the fiscal committees of the Senate and Assembly, and the Legislature itself from "exercising any and all alleged functions, powers, authority, duties, rights and responsibilities relating to the legislative process of enacting" the budget and implementing budget bills.

Noting that the budget at that time had not yet been [*548] approved by the Legislature, [**97] Supreme Court dismissed the complaint as premature. The Appellate Division reinstated the complaint, reasoning that since the gravamen of the complaint went to the claimed failure of the Governor to submit a proper budget, and not any action or failure to act by the Legislature, this action was not premature. That court then declared the budget to be valid.

Initially, we note that the Legislature has since adopted the budget in substantially the same form in which it was submitted by the Governor. Accordingly, we need not consider the arguments presented below concerning prematurity, and we shall instead turn to the merits of the controversy before us.

Appellants correctly urge that the Governor is required to submit an "itemized" budget to the Legislature (NY Const, art VII, §§ 1-7; *People v Tremaine*, 281 NY 1). They argue that the challenged budget is insufficiently itemized to provide the Legislature with the information necessary for that body to properly perform its constitutional role as the ultimate guardian of the public fisc. They also suggest that the inclusion in the budget of a provision allowing the transfer of funds within particular programs and departments following passage of the budget by the Legislature, unconstitutionally precludes effective legislative control over the expenditure of public funds.

A similar challenge was made to the 1971-1972 budget in *Hidley v Rockefeller* (28 NY2d 439). There we found that the plaintiffs lacked standing to challenge the budget, and thus the court did not reach the merits [***734] of that challenge. In light of our subsequent holding in *Boryszewski v Brydges* (37 NY2d 361), no such barrier precludes the challenge now before the court.

The dispositive question presented by this case is the extent to which the courts of this State may intervene in the budgetary process in order to ensure that the methodology prescribed by the Constitution is properly utilized. The issue is a basic one, involving the application of certain principles fundamental to our system of government. It is, of course, beyond question that the Constitution does require itemization (see *People v Tremaine*, *supra)*. Appellants argue quite properly that it is the responsibility of this court to apply and enforce the will of the people as expressed in our Constitution, even if this results in considerable practical difficulty (see *Bethlehem Steel Corp. v Board of Educ.*, 44 NY2d 831); see, also, NY Const, art VI, § 3, subd b, par [8]); and they urge [*549] that no branch of government may avoid the mandate of the Constitution (see, e.g., *Matter of Greene*, 166 NY 485). From this, they would have us conclude that it is a proper function of the courts to police the degree of itemization necessary in the State budget. We cannot agree with this conclusion, for it would require the courts to assume a role for which they are neither constituted, suited, nor, indeed, designed.

Our State government, like the Federal Government, is a tripartite institution, with power variously distributed between three coequal branches (see NY Const, art III, § 1; art IV, § 1; art VI). It comprises a system of checks and balances intended to ensure "the preservation of liberty itself, which is ended by the union of the three functions in one man, or in one body of men. It is a fundamental principle of the organic law that each department should be free from interference, in the discharge of its peculiar duties, by either of the others" *(People ex rel. Burby v Howland*, 155 NY 270, 282; see, also, *People ex rel. Broderick v Morton*, 156 NY 136). The power of the judiciary is as subject to such limitations as is that of its co-ordinate branches of government, for the spectre of judicial tyranny is no more palatable to a free people than is the threat of an uncontrolled executive or legislative branch.

Under our system of government, the creation and enactment of the State [**98] budget is a matter delegated essentially to the Governor and the Legislature. The Governor, as chief executive officer, has the responsibility and the obligation to ascertain the financial needs of the various departments and projects of the State government, and to submit to the Legislature for its consideration a budget and various appropriation bills incorporating those needs (NY Const, art VII, §§ 2, 3). It is for the Legislature to review that proposed budget, and to approve or disapprove of the various expenditures proposed by the Governor (NY Const, art VII, § 4). For the Legislature to intelligently fulfill its proper role, it is of course necessary that the budget be itemized, lest the Legislature simply be presented with a lump sum which could be spent at the discretion of the Governor.

No one disputes the need for itemization, and indeed, the present budget is certainly itemized to a considerable extent. Appellants urge us to review the extent of that itemization, and to determine whether it accords with the intent of the Constitution. The Constitution, however, does not prescribe any particular degree of itemization. As then Judge Breitel [*550] correctly stated in his dissent in the *Hidley* case, "[there] is a constitutional mandate to itemize. There is no constitutional definition of itemization. There is no judicial definition of itemization and no inflexible definition is possible. Itemization is an accordion word. An item is little more than a 'thing' in a list of things. A house is an item, and

so is a chair in the house, or the nail in the chair, depending on the depth and purpose of the classification. The specificness or generality of itemization depends upon its function and the context in which it is used. In one [***735] context of a budget or appropriation bill the description of 1,000 police officers within a flexible salary range would be specific and particular; in another it would leave the appointing power with almost unlimited control. In one context an 'item' of $ 5,000,000 for construction of a particular expressway might seem specific; in another, void of indication when, how, or where the expressway or segments of it would be constructed. This suggests that there is something of a battle over words in debating the need for items, rather than a grappling with a functional concept" (28 NY2d, p 444, *supra)*.

As we noted above, itemization is necessary to facilitate proper legislative review of the proposed budget. Since this is so, the degree of itemization necessary in a particular budget is whatever degree of itemization is necessary for the Legislature to effectively review that budget. This is a decision which is best left to the Legislature, for it is not something which can be accurately delineated by a court. It is, rather, a function of the political process, and that interplay between the various elected representatives of the people which was certainly envisioned by the draftsmen of the Constitution. Should the Legislature determine that a particular budget is so lacking in specificity as to preclude meaningful review, then it will be the duty of that Legislature to refuse to approve such a budget. If, however, as here, the Legislature is satisfied with the budget as submitted by the Governor, then it is not for the courts to intervene and declare such a budget invalid because of a failure to measure up to some mythical budget specifically delineating the exact fate of every penny of the public funds. "Direct concern with the degree of particularization or subdivision of items lies exclusively with the executive and legislative branches of government simply because they are the sole participants in the negotiation and adoption of an executive budget" *(Hidley v Rockefeller*, 28 NY2d, p 445, [*551] *supra* [Breitel, J, dissenting]). Should a Legislature fail in its responsibility to require a sufficiently itemized budget, the remedy lies not in the courtroom, but in the voting booth.

A similar conclusion must prevail with respect to the provision for the intra-program transfer of funds after the budget has been approved. If the Legislature determines that the demands of government require a certain flexibility in the use of [**99] appropriated funds within a particular program or department, then the Constitution is satisfied, and the courts will not disturb that result. Thus, appellants' challenge to the authorization contained in the budget to transfer funds within scheduled appropriations must also fall. "Transfer provisions are really strings attached to the appropriated items and to that extent 'de-itemize' them depending how unrestricted or unconditioned are the transfer provisions. Consequently, transfer provisions are valid because the Legislature has enacted them, and thereby approved flexibility in the appropriated items. If the Legislature is or should become concerned that the transfer provisions give the Executive too much leeway and deprives them of the supervisory power they have and wish to exercise, the remedy is in their hands. The point is that there is no constitutional invalidity involved so long as ultimately, however done, the Executive proposed the appropriations and there is agreement as to the limitations and conditions they contain" *(Hidley v Rockefeller*, 28 NY2d, p 446, *supra* [Breitel, J., dissenting]).

We do not suggest by our decision today that the budgetary process is per se always beyond the realm of judicial consideration. Nor do we retreat in the slightest from our decision in *People v Tremaine* (281 NY 1, *supra)*, in which we struck down a legislative attempt to invade the power of the executive to draft the budget. The courts will always be available to resolve disputes concerning the scope of that authority which is granted by the Constitution to the other two branches of the government. Today, we simply refuse to extend the power of the robe into an arena [***736] in which it was never intended to play a role. We hold only that the degree of itemization and the extent of transfer allowable are matters which are to be determined by the Governor and the Legislature, not by judicial fiat.

Accordingly, the order appealed from should be affirmed, without costs.