

COMM. ON RESOURCES & DEVELOPMENT v. BOWLES

the plaintiff as *iroij*, the defendant Jablur as *alab* and the defendant Clancy as *dri jermal*.

2. That the division of the remainder of the proceeds from Jabonbar *Wato* shall be divided equally between the plaintiff and the defendant, Clancy, the defendant Jablur having heretofore received a one-third share.

COMMITTEE ON RESOURCES AND DEVELOPMENT, HOUSE
OF REPRESENTATIVES, FOURTH CONGRESS OF
MICRONESIA, Plaintiff

v.

ROBERT I. BOWLES, GORDON W. BRADLEY, and
LAWRENCE MORDEROSIAN, Defendants

Civil Action No. 1005

Trial Division of the High Court

Mariana Islands District

December 10, 1971

Petition seeking a court order to compel giving of desired testimony by Executive department to Committee of Congress of Micronesia House of Representatives. The Trial Division of the High Court, H. W. Burnett, Chief Justice, held that the committee lacked the authority to challenge, in a civil action, a decision of its coequal branch, the Executive department.

1. Contempt—Criminal—Generally

Criminal contempt, while an ordinarily appropriate punitive procedure, is utterly inappropriate when the focus of the controversy is on disclosure of information held by members of one branch of government and desired by members of another branch.

2. Trust Territory—Administering Authority

A Committee of the Congress of Micronesia House of Representatives lacks the authority to challenge, in a civil action, a decision of their coequal branch, the Trust Territory Executive Department.

Counsel for Plaintiff:

MICHAEL A. WHITE, ESQ.

Counsel for Defendants:

JAMES A. STANTON, ESQ.

Assistant Attorney General

BURNETT, *Chief Justice*

Petitioner, a Standing Committee of the Congress of Micronesia House of Representatives (hereinafter Committee), seeks the assistance of this Court in order to complete a Committee investigation. On November 30, 1971, at a session of the Committee, the Respondents, representatives of the Executive departments concerned with contract administration, declined to testify as to certain Trust Territory contract matters; Respondents claim that the information is privileged as to persons not within the Executive department and not directly concerned with contract administration. As an alternative to criminal contempt proceedings, the Committee herein seeks civil relief. A rule directing Respondent to appear and show cause why a writ of mandate to compel the desired testimony should not issue was granted. Respondents replied through a motion to dismiss, advancing several grounds for dismissal. They contend that the Committee lacks the capacity or authority to bring an independent civil action, and that the Committee has an exclusive remedy in the statutory contempt provisions. The issue of capacity or authority was the major subject of argument and consideration at the initial hearing; at the close of argument the motion to dismiss was taken under consideration by this Court.

[1] There is something fundamentally unfair and unjust about application of criminal processes in a setting such as this; criminal contempt, while an ordinarily appropriate punitive procedure, is utterly inappropriate when the focus of the controversy is on disclosure of information held by members of one branch of government and desired

by members of another branch. When individuals, acting in their representative capacities, may risk criminal penalties for observing the instructions of their superiors, the potential for injustice is appalling. This is especially true since this matter actually revolves about the scope of authority of two coequal branches, with the individuals on each side asserting the interests of the government branch which they are sworn to represent.

In a situation similar to this, the inappropriateness of criminal contempt procedures in such a matter was fully articulated. When the Circuit Court of Appeals reversed the criminal contempt conviction of Austin J. Tobin, Executive Director of the Port of New York Authority, Judge Bastian, repeating the sentiments first expressed during trial by Judge Youngdahl, said, "Appellant is no criminal and no one seriously considers him one. He stands before us convicted of crime merely because no method has been provided for testing the merits of his contentions save that of a prosecution for contempt of Congress." *Tobin v. United States* (D.C.), 306 F.2d 270 (1962) at 274, cert. den. 371 U.S. 902, 83 S.Ct. 206. Judge Bastian went on, quoting Judge Youngdahl, "Especially where the contest is between different governmental units, the representative of one unit in conflict with another should not have to risk jail to vindicate his constituency's rights." *Tobin v. United States*, supra, at 276. I believe in and share that sentiment. I have searched very hard to find a basis for supporting the Committee assertion that there is an alternative to contempt procedure. The Committee seeks information, and if it is at all possible to give it to them, whether in this Court or as a matter of adjusting inevitable differences between two coequal branches of government, then most certainly that information should be provided.

A formal action, such as this, wherein one branch of the government disputes with another the scope of their respective powers, is certainly a question of first impression in the Trust Territory. In the only similar instance brought to the attention of this Court, a matter decided by the highest court of the United States, the situation remarkably resembled the matter now before me. The Supreme Court of the United States, in *Reed v. County Commissioners of Delaware County*, 277 U.S. 376, 48 S.Ct. 531 (1928), held that a committee of the United States Senate lacked the authority to challenge, in a civil action, the decisions of an inferior State executive. After noting that the committee had not been authorized, by Senate Resolution, to sue "even if it be assumed that the Senate alone may give that authority", the court said ". . . the Senate may not reasonably be held to have intended to depart from its established usage. Authority to exert the powers of the Senate to compel production of evidence differs widely from authority to invoke judicial power for that purpose."

[2] I believe the principle of the *Reed* decision, supra, clearly applicable in this matter, and find that a Committee of the Congress of Micronesia House of Representatives lacks the authority to challenge, in a civil action, a decision of their coequal branch, the Trust Territory Executive department. I, therefore, feel obligated to sustain the motion to dismiss. It is so ordered.