CARCIERI, GOVERNOR OF RHODE ISLAND V SALAZAR, SECRETARY OF THE INTERIOR

Supreme Court of the United States (Roberts CJ, Thomas, Scalia, Kennedy, Breyer, Alito, Scouter, Ginsburg, Stevens JJ)
24 February 2009
555 US ___ (2009)

United States of America – land into trust – Narragansett Indian tribe of Rhode Island – United States Department of the Interior – *Indian Reorganization Act of 1934*, Pub L No 73-383, 48 Stat 984 – 'recognised Indian Tribe now under Federal jurisdiction' under § 479 of the Act – whether the Narragansett tribe is under federal jurisdiction – limits to the exercise of the Secretary's trust authority under § 465 of the Act

Facts:

At the time of colonial settlement, the Narragansett Indian tribe occupied much of what is now the State of Rhode Island. In 1880, the State of Rhode Island convinced the tribe to relinquish its tribal authority as part of an effort to assimilate the tribal members into the local population. The tribe agreed to sell all but two acres of its remaining reservation land. Almost immediately, the tribe regretted this decision and started a campaign to regain its land. The tribe sought support from the Federal Government from 1927 to 1937 but the federal officials declined their request noting that the tribe was and always had been under the jurisdiction of the New England States, rather than the Federal Government. Having failed to gain recognition or assistance from the United States or Rhode Island, in 1970 the tribe filed suit to recover its ancestral land. In 1978, by agreement with Rhode Island, the tribe received title to 1800 acres of land in exchange for relinquishing its past and future claims to land based on aboriginal title. The tribe gained recognition from the United States Government in 1983.

The *Indian Reorganization Act of 1934*, Pub L No 73-383, 48 Stat 984 ('*IRA*') authorises the Secretary of the Interior to acquire land and hold it in trust 'for the purpose of providing land for Indians' (§ 465). The *IRA* defines the term Indian to include all persons of Indian descent who are members of any recognised tribe now under federal jurisdiction (§ 479). In 1991, the Narragansett tribe purchased an additional 31 acres of land adjacent to land it already held and planned to build houses on it. A dispute arose about whether the tribe's planned construction of housing had to comply with local regulations. The Secretary accepted the tribe's land into trust. Petitioners appealed the Secretary's decision.

The issue for the Supreme Court to decide was whether the *IRA* empowers the Secretary to take land into trust for Indian tribes that were not recognised under federal jurisdiction in 1934.

Held, reversing the decision of the Court of Appeal to affirm the Secretary's decision (per Thomas J, Roberts CJ, Scalia, Kennedy and Alito JJ agreeing; Breyer J concurring; Souter and Ginsberg JJ agreeing in part and dissenting in part; Stevens J dissenting):

1. Where the statutory text is plain and unambiguous it must be applied according to its terms. The Secretary's authority to take the parcel in question into trust depends on whether the Narragansetts are members of a 'recognised Indian tribe now under Federal jurisdiction', per § 479 of the *IRA*. That question in turn requires the Court to decide whether the phrase 'now under Federal jurisdiction' refers to 1998, when the Secretary accepted the 31 acres into trust, or to 1934, when Congress enacted the *IRA*: [2]; *United States v Gonzales*, 520 US 1 4 (1997) applied; *Dodd v United States* 545, US 353 (2005) applied.

2. The ordinary meaning of the word 'now', as understood when the *IRA* was enacted , was 'at the present time, at this moment, at the time of speaking'. The term 'now' as used

in a statute usually refers to the date of its taking effect. This definition is consistent with the interpretations given by the Court, both before and after the passage of the *IRA*, with respect to use in other statues. It also aligns with the natural meaning of the word within the context of the *IRA*: [2]; *Director, Office of Workers' Compensation Programs v Greenwich Collieries,* 512 US 267 (1994) cited; *Moskal v United States,* 498 US 103 (1990) cited.

3 The Secretary's current interpretation is at odds with the Executive Branch's construction of this provision at the time of enactment. In accordance with the interpretation of the Commissioner of Indian Affairs at the time of the *IRA*'s enactment, the word 'now' in § 479 limits the definition of 'Indian' and therefore limits the exercise of the Secretary's trust authority under § 465 to those members that were under federal jurisdiction at the time the *IRA* was enacted: [2].

4. The Secretary's contentions that the word 'now' is ambiguous are not persuasive. Here, the statutory context makes clear that 'now' does not mean 'now or heareafter' or 'at the time of application'. If Congress intended to legislate such a definition they would have done so explicitly and Congress left no gap in § 479 for agency to fill: [2]; *Deal v United States,* 508 US 129 (1993) cited.

5. There is no need to consider whether or not Congress had a policy justification for limiting the Secretary's trust authority to those tribes under federal jurisdiction in 1934, because Congress' use of the word 'now' in § 479 speaks for itself. The courts must presume that the legislature says in a statute what it means and means in a statute what it says there: [2]; *Connecticut National Bank v Germain,* 503 US 249 (1992) applied.

6. The two alternative arguments, which rely on statutory provisions other than the definition of 'Indian' in § 479 to support the Secretary's decision to take the parcel into trust for the tribe, are rejected. There is no legitimate way to circumvent the definition of 'Indian' in delineating the Secretary's authority under §§ 465 and 479. The National Congress of American Indians' submission that § 2202 of the *Indian Land Consolidation Act of 1983*, Pub L No 97-459, 96 Stat 2517 (ILCA) overcomes the limitations set forth in § 479 and in turn authorises the Secretary's action fails, as the Court will not assume that Congress repealed the plain and unambiguous restrictions on the Secretary's exercise of trust authority in §§ 465 and 479 when it enacted § 2202. Absent a clearly expressed congressional intention an implied repeal will only be found where provisions in two statutes are in irreconcilable conflict or where the latter Act covers the whole subject of the earlier one and is clearly intended as a substitute: [3].

7. The term 'now under Federal jurisdiction' in § 479 unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the *IRA* was enacted in 1934. None of the parties have contended that the Narragansett tribe was under federal jurisdiction in 1934: [4].